

Jeffery A. Hunnes, Attorney No. 2406
Laura T. Myers, Attorney No. 12918
Michael P. Sarabia, Attorney No. 39456740
Guthals, Hunnes & Reuss, P.C.
P.O. Box 1977
Billings, MT 59103-1977
Telephone: (406) 245-3071
Facsimile: (406) 245-3074
E-mail: jhunnes@ghrlawfirm.com
lmyers@ghrlawfirm.com
msarabia@ghrlawfirm.com

Attorneys for Debtor

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

In Re:)
) Chapter 11
MOUNTAIN DIVIDE, LLC,)
) Case No. 16-61015-11
Debtor.)
) NOTICE OF HEARING
))
) Date: November 22, 2016
) Time: 9:00 a.m.
) Location: James F. Battin Courthouse
) 5th Floor
) 2601 2nd Avenue North
) Billings, MT 59101
)

DEBTOR'S MOTION FOR (I) BIDDING PROCEDURES ORDER (A) APPROVING SALE AND BIDDING PROCEDURES; (B) APPROVING THE FORM AND MANNER OF NOTICE; (C) SCHEDULING AUCTION AND SALE HEARING; AND (D) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (II) SALE ORDER AUTHORIZING SALE OF SUBSTANTIALLY ALL ESTATE ASSETS TO THE HIGHEST AND BEST BIDDER

Mountain Divide, LLC (“**Mountain Divide**” or “**Debtor**”) as Debtor and debtor-in-possession in the above-entitled Chapter 11 case, and pursuant to 11 U.S.C. §§105, 363 and 365 and 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”), and Rules 2002, 4001, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), hereby moves this Court (this “**Sale Motion**”) to enter the following orders (the “**Bidding Procedures Order**”) and (the “**Sale Order**”) as follows:

(1) a Bidding Procedures Order that:

(A) approves sale and bidding procedures (the “**Sale and Bidding Procedures**”) to identify the person or entity who is prepared to make the highest and best bid for the Debtor’s assets, including approval of a Stalking Horse Bidder and Break-Up Fee (both as defined below);

(B) approves the form and manner of notice to creditors and parties in interest (the “**Sale Notice**”); and

(C) schedules the date and time for a Bid Deadline, the Auction and the Sale Hearing, and Debtor requests the following dates:

Bid Deadline	January 9, 2017
Auction	January 17, 2017
Sale Hearing	January 20, 2017; and

(D) authorizes the assumption and assignment of specified executory contracts and unexpired leases in connection with such sale; and

(2) a Sale Order following a Sale Hearing (as defined below) that authorizes the sale of substantially all of Debtor’s assets free and clear of liens, claims, rights, interests, and encumbrances (“**Liens**”) to the highest bidder, with all such Liens attaching to the net proceeds

received from the sale of the particular asset sold in the same order, priority, dignity and effect that such Lien had immediately prior to such sale.

In support of this Sale Motion, Debtor respectfully states as follows:

BASIS FOR RELIEF REQUESTED

Mountain Divide requests the Court to approve implementation of a process for the prompt sale of the Debtor's assets on a going concern basis. There are exigencies given the assets involved. Oil and gas properties require constant oversight and expenditures, and in certain instances the expenditure of funds to be obtained under the proposed debtor-in-possession financing, to ensure the operations and production continue. The Debtor in its business judgment believes that the prompt sale of its assets on a going concern basis is the best alternative to ensure the value of the assets is preserved and otherwise its potential value maximized. An inability to obtain authorization for the sale process requested in this Motion will be fatal to the Debtor's ability to operate and be disastrous to its creditors, secured and unsecured, because immediate operational needs will not be performed, and production could terminate with a resulting loss of the assets.

Mountain Divide believes that the relief requested in this Motion is in the best interests of creditors and the bankruptcy estate. In support of this Motion, and its business judgment, Debtor relies on the *Affidavit of Patrick M. Montalban*, dated October 19, 2016 filed under Doc. No. 23, and states as follows:

JURISDICTION AND VENUE

1. On October 14, 2016 (the "**Petition Date**"), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code with the Clerk of this Court. The Debtor

continues to operate its business and manage its properties as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of the Debtor's Chapter 11 case and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief requested are 11 U.S.C. §§ 105, 363, and 365 in addition to Rules 2002, 4001, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure.

FACTUAL BACKGROUND

4. Mountain Divide is a Montana limited liability company with its principal place of business and company administrative offices in Cut Bank, Montana, which owns and operates oil and gas wells, situated in Divide County, North Dakota. Mountain Divide was formed on October 18, 2012, by the filing of Articles of Organization with the Montana Secretary of State. Mountain Divide has also maintained a company administrative office in Billings, Montana.

5. Mountain Divide has employed, throughout the year, approximately 9 employees, some of which were part-time employees. At present, the company employs 5 employees.

6. Mountain Divide is engaged in the business of oil and gas exploration, development and production. As an exploration, development and production company, Mountain Divide's assets, revenue and general financial condition are directly correlated to the price of oil and natural gas. Mountain Divide operates 9 wells in the 12 Gage Project in Divide County, North Dakota and owns interests in 2 well bores for uncompleted wells for which the oil and gas leases have been terminated.

7. On November 1, 2012, Mountain Divide obtained loans and other financial accommodations from Wells Fargo Energy Capital, Inc. (“**Wells Fargo**”) and incurred obligations pursuant to the terms of various instruments, including under that certain Credit Agreement by and between Mountain Divide as borrower and Wells Fargo as lender and other interrelated agreements, notes, pledges, documents, certificates, assignments and other instruments that evidence and secure obligations owed to Wells Fargo. Mountain Divide used the funds borrowed from Wells Fargo to fund drilling, equipping and completing certain wells and to fund engineering and other costs. All prepetition obligations owed by Mountain Divide are secured by assignments, pledges, mortgages, control agreements, financing statements, fixture filings, and other related instruments that, among other things, grant continuing liens on and security interests in the Debtor’s properties and assets including, without limitation, cash, deposits, leases and interests in leaseholds, wells and related rights, accounts, receivables and other rights to payment, revenues, proceeds of production, insurance proceeds, chattel paper, contracts, contract rights, goods, inventory, intellectual property, documents, equipment, machinery, fixtures, general intangibles, payment intangibles, causes of action, commercial tort claims, deposit accounts, books and records, investment property and instruments, together with the products, accessions and proceeds of all of the foregoing.

8. A sudden and unexpected decrease in the market prices for oil and natural gas from the time the obligations were incurred and the fact that such prices have remained depressed until now has had a severe impact on the Debtor’s business. The persisting state of declining market values for oil and gas and related economic uncertainties has made it difficult for Mountain Divide to obtain capital necessary to sustain positive operations and satisfy its liabilities. Unable to raise capital in this environment and generate sufficient positive net revenue from production has

resulted in a sustained situation in which Mountain Divide has declining asset values and revenue while operating costs remain relatively constant.

9. The liquidity constraints confronting the company precluded Mountain Divide from satisfying its obligations to Wells Fargo as well as obligations owed to a number of other creditors.

10. During 2015, Mountain Divide similarly fell behind in paying its trade creditors due to cash flow short falls attributable to the suddenly decreased price of crude oil. A number of trade vendors, including Canary LLC, Canrig Drilling Technology Ltd., Coil Tubing Solutions, LLC, Irongate Rental Services, LLC, K&D Enterprises, Inc. d/b/a Pressure Pumping Services, MBI Energy Logistics, LLC, MBI Energy Rentals, Inc., MBI Energy Services, M-I, LLC, d/b/a MI-SWACO, Nabors Drilling USA, LP, Northern Energy Services, LLC, Northern States Completions, Precision Completion and Production Services, Ltd., Weatherford U.S. L.P., Yankee Fishing & Rentals, High Plains, Inc., American Pipe and Supply Company, Sanjel USA Inc., Schlumberger Technology Corporation, and Precision Directional Services, Inc. (the “**Oil and Gas Lien Claimants**”), filed and/or served oil and gas lien claims against certain wells and the products and proceeds thereof.

11. During 2016, Mountain Divide fell behind in paying oil and gas royalties to mineral owners or their assignees due to cash flow shortfalls attributable to the suddenly decreased price of crude oil. During September of 2016, at least two royalty owners, Kathryn Holle and Larry Lee (collectively, the “**Mineral Interest Lien Claimants**”) filed oil and gas sales liens asserting claims against certain wells and the products and proceeds thereof. The Oil and Gas Lien Claimants and the Mineral Interest Lien Claimants are referred to collectively herein as the “**Lien Claimants**”.

12. Mountain Divide has worked on multiple different solutions to resolve its outstanding obligations prior to the commencement of the bankruptcy case, including proposals to settle its trade credit debt with Oil and Gas Lien Claimants that included a partial sale of 3 wells to a buyer in an arm's-length transaction. Proceeds from the transaction were to be used to fund a settlement agreement with 56 of Mountain Divide's creditors. Mountain Divide was successful in getting all 56 vendors to agree to the settlement agreement. Terms of the debt settlement agreement included all lien holders, including Wells Fargo, depositing original lien releases with a trustee to be held in trust and recorded after settlement amounts were paid per the terms of the agreement. The simultaneous partial asset sale and settlement agreement did not close. Despite the fact that Mountain Divide and the purchaser of the assets worked on the transaction for over 6 months, the purchaser abandoned the deal due to the further drastic drop in commodity prices in early 2016.

13. In response to the initial debt settlement failing to close, Mountain Divide negotiated a forbearance and preservation of collateral agreement with Wells Fargo and proposed to enter into a debt forbearance proposal with its trade creditors. The major terms of the proposal included a resolution under which all creditors participating in the proposal would forbear for a period of time in order to permit the market to rebound and time to pursue a strategic transaction that would produce value for the benefit of creditors. Under the Debtor's proposal, creditors would release liens and claims in exchange for a settlement amount to be paid to each creditor upon the successful close of a strategic transaction. Unfortunately, despite its significant efforts, management was unable to reach a settlement with a small number of vendors.

14. Because market oil prices have remained low and have not recovered, Mountain Divide has experienced an extreme cash flow problem over the last 12 to 18 months. In response

to its liquidity problems, Mountain Divide has made numerous attempts in good faith to settle its debts outside of a bankruptcy proceeding through either a comprehensive debt restructure plan or through the sale of its assets. Mountain Divide's attempts were unsuccessful and the company was forced to file for protection under Chapter 11 of the Bankruptcy Code to address its situation in order to provide an opportunity to obtain value for the benefit of creditors.

15. Mountain Divide also has reduced its general and administrative expenses to the extent possible for continued operation and survival. It has closed its leased Billings, Montana office and maintains some of its financial operations from the office of its Controller in Billings. It has reduced its staff, including its land department, engineering and accounting staff. The company has also (1) enacted salary reductions for remaining employees, (2) reduced its contribution to employee health insurance coverage, and (3) renegotiated its water gathering and disposal contracts, the largest variable costs incurred in field operations. Through the cost conservation efforts outlined above in addition to other general cuts not listed, monthly general and administrative costs for the company have decreased from approximately \$100,000 during 2014 to approximately \$29,000 during 2016, a 70% decrease. Monthly field operating costs have decreased from \$624,000 in 2014 to \$310,000 during 2015 a 50% decrease. Monthly operating costs for 2016 have decreased further from the 2015 benchmark, however, the decrease relates to additional factors such as production interruptions.

16. Since July of 2016, Mountain Divide has been in negotiations with a prospective purchaser to sell substantially all of the Debtor's business assets and assume certain contracts and obligations in a sale to be conducted pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, subject to higher and better offers (the "Sale"). Those negotiations have resulted in Debtor entering into a Purchase and Sale Agreement (the "PSA") with two purchasers, Deep River

Operating, LLC (“**DRO**”) and Future Acquisition Company, LLC (“**FAC**”). DRO and FAC are referred to herein as the “**Buyer**”. A true and correct copy of the PSA without the attendant and voluminous exhibits and schedules is attached hereto as Exhibit A, except Exhibits F and H are included because they respectively set forth the Escrow Agreement, and the terms on which the Buyer agreed in the PSA to be the Stalking Horse Bidder (as defined below).

17. The assets to be sold under the PSA are identified as “**Purchased Assets**” in the PSA. The Purchased Assets consist of Debtor’s interest in Mineral Leases, Wells operated by Debtor, Production Facilities, Equipment, certain vehicles, and Hydrocarbons produced from the Mineral Leases all as more completely set forth in the PSA. The PSA also provides for the assumption and assignment of certain Contracts and Joint Operating Agreements, subject to approval of the parties and the Court. Subject to the limitations set forth in the PSA, Cure Costs for unpaid prepetition royalties and working interest owner payments are paid out of sale proceeds at Closing and estimated to be approximately \$466,000. Buyer assumes obligations and receivables for unknown and unlocatable royalty and working interest owner obligations.

18. Under Exhibit H to the PSA, Mountain Divide requests that Buyer be approved as the “stalking horse” bidder (the “**Stalking Horse Bidder**”) with an opening bid of \$3,000,000 to be paid according to the terms of the PSA. Exhibit H provides that FAC will be entitled to a break-up fee of \$100,000 (the “**Break-Up Fee**”) subject to Bankruptcy Court approval, which shall be remitted, if payable under the terms of the Sale and Bidding Procedures, to FAC’s counsel, for distribution to FAC in the event Buyer is not the Successful Bidder.

19. The PSA with Buyer was negotiated by the Debtor at arm’s length, and involves substantial give and take between the parties. Mountain Divide has sought purchase offers for its assets from multiple parties over an extended period of time before the Petition Date. The best

offer received to date is the cash offer of Buyer for \$3,000,000. The next best offer communicated to Mountain Divide within the past 10 months has been for \$2,100,000.

20. The objective of this Chapter 11 case is to preserve Mountain Divide's oil and gas business as a going concern. As part of its strategy to maximize value for its creditors, Mountain Divide seeks to consummate, as promptly as practicable, a §363 sale of substantially all of its assets to a financially capable buyer who is willing and able to infuse the capital necessary to keep the business running, using Buyer as a Stalking Horse Bidder and the PSA as the basis for an auction sale; and, to hold the net proceeds from sale of its assets for payment to creditors pursuant to a Chapter 11 Plan or further Court order, with all Liens attaching to such proceeds in the same order, priority, dignity and effect that such Liens had immediately prior to such sale.

RELIEF REQUESTED

21. By this Motion, Debtor seeks to establish a sale process and at the conclusion of such process, following the Sale Hearing, seeks authority pursuant to 11 U.S.C. §§ 105 and 363(b) and (f) to sell substantially all of its assets (the "Purchased Assets" under the PSA), free and clear of all Liens, with all Liens attaching to such proceeds in the same order, priority, dignity and effect that such Liens had immediately prior to such sale. Debtor firmly believes that the sale of its assets under §§ 105 and 363 of the Bankruptcy Code will best serve the creditors in this case. A going concern sale to a financially stable buyer will enable Debtor's business to continue to operate and will maximize the value of the estate. Debtor requests that the sale proceeds of any consummated §363 sale be escrowed in a separate account for distribution pursuant to further Court order.

22. Mountain Divide believes the Sale and Bidding Procedures proposed herein are the best way to maximize the value of its assets for its creditors. Debtor requests the Court to approve the proposed Bidding Procedures Order attached as Exhibit B and the Sale and Bidding Procedures

attached thereto as Exhibit 1 to be provided to creditors, prospective purchasers and all parties in interest. The proposed Sale and Bidding Procedures, set forth below, are believed to be sufficient to advertise to interested parties the fact that the assets of Debtor are for sale, will be fair and equitable to the creditors and interested parties, and will result in the sale of assets and ultimately produce value for the benefit of creditors.

23. Mountain Divide as “**Seller**” and Buyer have agreed that the Sale and Bidding Procedures will include the following provisions as set forth in the Bidding Procedures Order, which conform to the procedures set forth in Exhibit H of the PSA:

I. Proposed Sale and Bidding Procedures

A. Stalking Horse Bidder. Buyer will be identified as the Stalking Horse Bidder with an opening bid of \$3,000,000 according to the terms of the PSA.

B. Break-Up Fee. FAC will be entitled to a Break-Up Fee of \$100,000 subject to Bankruptcy Court approval, which shall be remitted, if payable under the terms hereof, to FAC’s counsel, for distribution to FAC as provided under their Joint Bid Agreement, as may be amended, to reimburse FAC for its substantial time and incurred and paid expenses in working with Deep River and the Debtor through due diligence, providing the Deposit and, together with Deep River, being the Stalking Horse Bidder, which will provide a venue and opportunity for spirited bidding with other Qualified Bidders. Seller will request the Court approve, as part of these bid procedures, that the Break-Up Fee is an administrative expense of the estate. Should Buyer not be the successful Bidder (the “**Successful Bidder**”), the Break-Up Fee shall be escrowed and paid at Closing to FAC as provided herein.

C. Property to be Sold. The property to be sold will be the assets of the Seller identified as “**Purchased Assets**” in the PSA. The Parties acknowledge that certain contracts will be identified prior to the auction as to whether they will be included in the sale.

D. Sale Free and Clear of Liens, Claims, Interests and Encumbrances. All of Seller’s right, title and interest in and to the Purchased Asset sold under the PSA will be transferred free and clear of all Liens in the property except for Permitted Liens and Assumed Liabilities. All Liens shall attach to the net proceeds of the sale with respect to the particular assets sold in the same order, priority, dignity and effect that such Lien had immediately prior to such sale.

E. Obtaining Due Diligence Access and Requests. Any person or entity interested in submitting a bid for the Purchased Assets must execute a confidentiality agreement in a form acceptable to Debtor and submit initial proof of financial wherewithal to consummate the acquisition of the Purchased Assets for the minimum cash bid of \$3,200,000. Any potential bidder that wishes to conduct due diligence on the Purchased Assets may be granted access to all material information that has been or will be provided to Buyer and other bidders. Seller maintains an online electronic data room and will provide access thereto to such persons or entities. The due diligence period for potential bidders will end one (1) business day before the Alternative Bid Deadline.

Debtor and its advisors shall coordinate all reasonable requests for additional information and due diligence access from potential bidders; provided, however, the Debtor may decline to provide such information to a potential bidder who, Debtor believes in its reasonable business judgment or subsequently determines does not intend in good faith to, or has the capacity to, consummate the purchase of the Purchased Assets.

Debtor designates Joseph Montalban to coordinate all reasonable requests for additional information and due diligence access. The contact information for Joseph Montalban is: P.O. Box 200, Cut Bank, MT 59427, phone: 1 (406) 873-2235, email: josephm@mountainviewenergy.com. Each potential bidder shall comply with all reasonable requests for additional information by Debtor regarding such potential bidder's financial wherewithal to consummate and perform obligations in connection with the sale. Failure by a potential bidder to comply with requests for additional information may be a basis for determination that a bid made by such bidder is not a Qualified Bid.

F. Marketing of Assets. Debtor will provide the confidentiality agreement and the Sale Notice to the persons or entities that have indicated interest in the Purchased Assets within the last year and to identified persons and entities in the oil and gas business in Montana, North Dakota, Wyoming and Colorado. Debtor will place advertisements or notices in several regional publications that target oil and gas activities.

G. "As Is, Where Is". The proposed sale of assets of Seller will be on an "AS IS, WHERE IS" basis and without representations or warranties of any kind, nature or description by Seller except as set forth in the PSA. Each Bidder shall be deemed to acknowledge and represent that it has had a full and complete opportunity to conduct such investigations, examinations, inspections and analyses of the Property as the Bidder, in its sole discretion, deems appropriate; and is not relying upon any statement, representations or warranties. The Assignment, Conveyance and Bill of Sale for the Purchased Assets shall be without warranty or representation by Seller.

H. The Sale Hearing. A hearing to approve the sale of the Purchased Assets to Buyer or other Successful Bidder ("**Sale Hearing**") will be held promptly following the Auction. Any

party who has filed an objection, or higher offer, will be expected to be present at the Sale Hearing, failing which the objection will be overruled or the higher offer stricken. If no other Qualified Bids are timely submitted and no objections to the proposed sale are timely filed with the Court, the court may enter the Sale Order without holding a Sale Hearing. Closing of the sale of the Property is expressly conditioned upon entry of a final Order of the Court.

I. Reservation of Rights. The procedures will be subject to Bankruptcy Court approval and may need to be modified to address the Court's requirements. Seller will consult with Buyer, Wells Fargo, and the Committee on any changes in the procedures, but will be required to follow all requirements of the Bankruptcy Court. If the procedures change in a material manner that is not reasonably acceptable to the Buyer, then FAC may in its discretion terminate its participation and role and will be refunded its deposit.

II. SALE PROCEDURES

A. Pre-Auction Sale Procedures.

1. Buyer is the Stalking Horse Bidder and is deemed a Qualified Bidder.
2. The asset sale will be subject to Sale Procedures as follows:
 - a. Any alternative bidder (each, an "**Alternative Bidder**" and its bid, an "**Alternative Bid**") interested in purchasing the Purchased Assets must submit a bid in writing to the Debtor with service on the following in conformity with the following procedures by no later than **12:00 p.m. Montana Time** on the eighth day before the Auction _____, 2017, (the "**Alternative Bid Deadline**") in order to be considered a Qualified Bid:

Debtor's counsel, Jeffery A. Hunnes, Guthals, Hunnes & Reuss, 175 N. 27th Street, Ste. 903, Billings, Montana 59101. jhunnes@ghrlawfirm.com

Deep River's counsel, Steven D. Erdahl, 2048 Overlook Drive, Fort Collins, Colorado 80526. Steven.erdahl@gtrenewables.com

FAC's counsel, Patrick L. Hughes, Haynes and Boone, LLP, 1221 McKinney, Suite 2100, Houston, Texas 77010. Patrick.hughes@haynesboone.com

Unsecured Creditors Committee counsel, Martin S. King, Worden, Thane, P.C., 111 North Higgins Ave., Suite 600, Missoula, Montana 59801. mking@wordenthane.com

b. The contents of such Alternative Bid must:

1. Identify the proponent of the Alternative Bid and an individual who is authorized to appear and act on behalf of the party submitting such Alternative Bid (the Alternative Bidder);

2. Be a firm, unconditional bid to purchase all or substantially all of the Purchased Assets, not subject to any contingencies as to the validity, effectiveness and/or binding nature of the offer, including, without limitation, the conduct of further due diligence review, obtaining financing or receipt of any consent from any third party;

3. Be an all cash bid of no less than \$3,200,000 and be accompanied by an irrevocable deposit delivered to the Attorney for the Debtor in the amount of \$300,000 (the "**Good Faith Deposit**") which will be placed into a non-interest bearing account under the terms of the Escrow Agreement until the 5th business day after the Order approving the sale of the Property is entered, after which time the Good Faith Deposits of Bidders that were not selected as the Successful Bidder or the Back-Up Bidder shall be returned;

4. Be accompanied by sufficient information to demonstrate that the competing Bidder has the financial wherewithal to timely consummate the acquisition of the Purchased Assets, as provided further below to comprise a Qualified Bidder;

5. Be accompanied by a signed contract substantially in the form of the PSA; and marked to show any changes made to the form of the PSA;

6. Provide proof that full payment will be made in cash, of the Final Purchase Price per the Alternative Bid.

At least three Business Days prior to the Auction, Debtor will give all Qualified Bidders and all other persons entitled to attend the Auction a copy of the highest and best Qualified Alternative Bid received and copies of all other Qualified Alternative Bids. In addition, Debtor

will inform each Qualified Bidder and each other person entitled to attend the Auction of the identity of all Qualified Bidders that may participate in the Auction.

c. Upon the receipt of a Bid, the Debtor will evaluate all bids to determine whether or not they are Qualified Bids and promptly inform and provide Buyer and any other Qualified Bidders of all Qualified Bids and any related information received.

d. If no Qualified Bid is submitted for the Purchased Assets, then the Debtor will request at the Sale Hearing that the Bankruptcy Court approve the proposed sale to Buyer and enter the Sale Order; or may request entry of the Sale Order without hearing.

e. In order to attend and participate in the Auction, the Stalking Horse Bidder or an Alternative Bidder (a "**Bidder**"), must provide the following in order to be a Qualified Bidder:

1. A Qualified Bidder is a Bidder that (A) delivers the documents described above under the Pre-Auction Sale Procedures to the Debtor, Wells Fargo and the Committee at least eight days before the Auction, and that (B) the Debtor, after consultation with Wells Fargo and the Committee, determines is reasonably likely to submit a *bona fide* offer and financially able to consummate a sale if selected as a Successful Bidder(s) at an auction (a "**Qualified Bidder**"). In the event a Notice of Disqualification is served by the Debtor six days before the Auction, the Proposed Purchaser(s) will not be a Qualified Bidder(s) and will not be permitted to attend the Auction.

2. A Qualified Bidder must provide written evidence reasonably acceptable to the Debtor, including current financial statements and a description of cash, equity and debt financing sources to be used to close the transaction as set forth in the Bid, together with tender of a binding commitment letter or similar affirmation of credit from acceptable financing sources, that demonstrates that the Bidder(s) has the necessary financial ability to close to the contemplated transaction (including access to capital totaling at least the Purchase Price), and provide adequate assurance of future performance under all contracts to be assumed in such contemplated transaction. The Debtor may require additional financial information to demonstrate that a Bidder may perform its obligations under any Overbid. In the event any Bidder is comprised of two or more parties, this provision applies to each party with respect to their separate contribution to the Bid.

3. Upon the receipt from a Bidder of the information, documents and cash consideration required under Pre-Auction Sale Procedures, the Debtor, within two business days, shall determine and notify the Bidder with respect to whether such Bidder is a Qualified Bidder, and confirm such Bidder may participate at the Auction.

4. The Debtor shall consult with Wells Fargo and the Committee on whether a bid is a Qualified Bid.

5. In the event any Bidder is comprised of two or more parties, and any one party (A) loses its right to bid, (B) fails to perform, or (C) does not meet the requirements of a Qualified Bidder, then, the remaining party or parties may step in the place of the disqualified party and assume (1) sole ownership of such disqualified party's rights under the PSA and (2) accept sole responsibility for the disqualified party's contribution (a "**Step-In Bidder**"). The Step-In Bidder must then requalify as a Qualified Bidder to demonstrate financial capability with regard to the newly assumed contribution within sufficient time to permit review by Debtor and conduct of the Auction on the proposed date.

B. Auction Procedures

1. If one or more Qualified Bids are submitted for the Purchased Assets the following Auction Process will take place:

a. Only Debtor, representatives of secured creditors, representatives of any Committee appointed by the Bankruptcy Court ("**Committee**"), and Qualified Bidders shall be entitled to attend the Auction, and only Qualified Bidders shall be entitled to make any additional bids at the Auction.

b. All Qualified Bidders shall be entitled to be present for all bidding with the understanding that the identity of each Qualified Bidder shall be fully disclosed to all persons present at the Auction and that all material terms of each bid will be fully disclosed to all persons present at the Auction

c. All Qualified Bidders shall be deemed to have consented to the core jurisdiction of the Court and to have waived any right to jury trial in connection with any disputes relating to the Auction and/or the sale of the Purchased Assets. All Qualified Bidders shall be

bound by their bids until such time as a definitive sale agreement (acceptable to the Debtor in its sole discretion) is executed by the Successful Bidder and the Bankruptcy Court has entered an order approving the sale to such Successful Bidder.

d. Prior to the start of the auction, Debtor may announce at the Auction additional procedural rules that it determines to be reasonable under the circumstances (e.g., the amount of the time allotted to make subsequent bids) for the conduct of the Auction, so long as such rules are not inconsistent with these Bidding Procedures. At the conclusion of the announcement of procedural formalities, the auction will proceed as follows:

1. The Debtor will conduct an "Open Cry Auction" (the "**Auction**") to consider the overbids for the Purchased Assets on _____ (or no later than _____) at U.S. Bankruptcy Court District of Montana, _____, _____, MT _____ beginning at _____ a.m. (Montana.)

2. Debtor shall evaluate all Qualified Bids received and shall determine which Qualified Bid reflects the highest and best offer as the Starting Bid, which shall be announced at the commencement of the Auction; and

3. At the Auction, bidding shall begin with the amount of the highest Qualified Alternative Bid (the "**Opening Bid**"), if any. The first incremental competitive bid at the Auction shall be at least One Hundred Thousand Dollars (\$100,000) over the Opening Bid; bidding shall thereafter continue in minimum increments of at least Fifty Thousand Dollars (\$50,000) higher than the previous bid. The order of bidding shall begin with the lowest Qualified Alternative Bid and shall continue in ascending order of each Qualified Alternative Bid, with Buyer being the last party to submit a subsequent bid in the initial round of bidding.

4. Buyer shall have the opportunity to increase its Bid by Fifty Thousand Dollars (\$50,000) in excess of the highest Qualified Alternative Bid to be eligible to become the starting bid, which increase will include Buyer's credit bid of One Hundred Thousand Dollars (\$100,000) for the Break-Up Fee against the purchase price, but any further increases by Buyer shall be in cash.

5. The Auction shall continue in one or more rounds of bidding and shall conclude after each participating Qualified Bidder has had the opportunity to submit an additional subsequent bid with full knowledge of the then-existing highest bid.

6. Any Qualified Bidder electing not to submit a subsequent bid when it is such party's turn to do so will be deemed to have "passed" its ability to bid in that round, but can continue to bid in later rounds.

7. No secured creditor shall have the right to credit bid its secured claim against Debtor, provided that the final sales price is at the full amount of \$3,000,000 or greater.

8. Any disputes as to which the bid constitutes the winning bid shall be determined by the Bankruptcy Court.

e. If any overbid from an entity is accepted but fails to be consummated, the Debtor shall be obligated to consummate the transaction with the next highest Bidder. If Buyer's bid is the next highest bid, at Buyer's option, on or before the date that is two (2) Business Days after the date of such failure to consummate (but no later), Buyer may purchase on the terms of the PSA, except for the purchase price, which shall be equal to the purchase price of the next highest bid submitted by Buyer.

f. In the event that Debtor determines in good faith that it has not received a Qualified Bid by the Bid Deadline that is a higher and better bid, Debtor shall seek approval of the PSA at the Sale Hearing without conducting an Auction.

g. The Successful Bidder's deposit shall be applied by the Debtor against the Purchase Price to be paid; and, in the event any such Successful Bidder does not consummate the transaction by reason of its breach of terms of the purchase agreement such Person has entered into or agreed to enter into with the Debtor, such deposit shall be retained by the Debtor as liquidated damages. Any party that submits a deposit but otherwise fails to submit a Qualified Alternative Bid or that submits a deposit and is not the Successful Bidder for the Purchased Assets shall receive a refund of such deposit as soon as practicable after closing of the transaction with the Successful Bidder (or any backup Qualified Bidder).

h. If the Bankruptcy Court approves the sale of the Purchased Assets to a Qualified Bidder other than the Stalking Horse Bidder, the Debtor shall escrow or otherwise have available \$100,000 from the sale proceeds to pay the Stalking Horse Bidder the Break-Up Fee. On the first business day after the closing of the Alternative Transaction or when reasonably practicable, the Debtor shall pay by wire transfer to FAC's counsel the Break-Up Fee of \$100,000, for allocation to the Stalking Horse Bidder for reimbursement to them as they have separately agreed, which represents a reasonable estimate (and not penalty) of the expenses incurred by Buyer in performing its due diligence, negotiating the PSA and attempting to have the Bankruptcy Court approve the sale to Buyer and the benefit to the Debtor in the stalking horse bid. The Break-Up Fee shall be deemed an administrative claim until paid.

i. Upon the withdrawal of this Sale Motion by the Debtor, or the termination of the PSA by Buyer following the material breach of the PSA by the Debtor, the Break-Up Fee will be payable to the Stalking Horse Bidder, provided that (i) the Stalking Horse Bidder shall be entitled to seek and be granted specific performance of the PSA to enable it to purchase the Purchased Assets on the terms contained in the PSA, and (ii) in addition, if for any reason (notwithstanding the Stalking Horse Bidder's right to compel specific performance) the Debtor sells all or substantially all of its assets to another buyer, then the Break-Up Fee shall be payable to the Stalking Horse Bidder on consummation of such sale.

j. In the event that the Stalking Horse Bidder engages in a material breach of the PSA, the Stalking Horse Bidder will be deemed to have waived any entitlement to a Break-Up Fee.

k. In the event either of the identified Stalking Horse Bidder Buyers are the Successful Bidder, and one of them does not perform on its obligations, the other Buyer shall have

sole entitlement to perform those obligations pursuant to Section II(A)(2)(e)(5) above and shall be the sole Buyer for all purposes and benefits under the PSA.

III. RETURN OF GOOD FAITH DEPOSIT

Good Faith Deposits of the Successful Bidder(s) shall be applied to the purchase price of such transaction at Closing. Good Faith Deposits of all Backup Bidder(s) shall be held in a non-interest bearing escrow account until five (5) days after closing of the transactions contemplated by the Successful Bid, and thereafter returned, to the respective Backup Bidder(s)¹; Good Faith Deposits of all other Qualified Bidders (other than the Successful Bidder(s) and the Backup Bidder(s)) will be returned as soon as reasonably practicable after determination of the Backup Bidder(s). If a Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Debtor shall be entitled to retain the Good Faith Deposit as part of its damages resulting from the breach or failure to perform by the Successful Bidder.

IV. CONDITIONS TO BUYER'S OBLIGATION TO CLOSE

Formal closing shall not occur until the Court has issued the Sale Order approving the applicable Asset Purchase Agreement and all of the terms and conditions thereof and authorizing the Debtor to consummate the transaction, and such Sale Order has either (i) become final and not appealable, or (ii) the Sale Order contains a waiver of the stay set forth in Rules 6004(h) and 6006(d) of the Federal Rules of Bankruptcy Procedure and such order has not otherwise been stayed at the time of closing, or (iii) if not final or otherwise subject to stay, the Buyer elects to proceed to close the transaction.

V. CLOSING DATE

¹ In the event the Stalking Horse Bidder is not the Successful Bidder, and is therefore a Backup Bidder, its Good Faith Deposit shall be returned to FAC as provided hereunder.

A closing of the sale of Property shall take place on or before the tenth day following the satisfaction or waiver of all conditions to the obligations of the parties to consummate the sale transaction contemplated by the Agreement.

VI. JURISDICTION

The Court shall retain jurisdiction as to any matter related to the submission of bids, the sale of the Property, and any disputes under the PSA and Sale Order.

24. **Inquiries.** Any questions concerning the sale of the Purchased Assets or the foregoing Sale and Bidding Procedures should be directed to Debtor's counsel: Jeffery A. Hunnes, Guthals, Hunnes & Reuss, P.C., 175 N. 27th Street, Ste. 903, Billings, Montana 59101. jhunnes@ghrlawfirm.com.

25. **Notice.** Upon Court approval and entry of the Bidding Procedures Order, Debtor will cause the Bidding Procedures Order and the Sale Notice, substantially in the form attached hereto as Exhibit C, to be served by first class mail, postage prepaid, facsimile, electronic transmission, or overnight mail upon: (i) all entities known by Debtor to have expressed an interest in a transaction with respect to the Purchased Assets during the past 12 months; (ii) all parties to relevant contracts or leases (executory or otherwise); (iii) all parties who are known or reasonably believed, after reasonable inquiry, to have asserted any lien, encumbrance, claim, or other interest in the Purchased Assets; and (iv) all parties set forth in the Debtor's Master Mailing Matrix and Service List maintained in this case (to the extent any such party has not received notice pursuant to sections (i) through (iii) above).

Assumption and Assignment Procedures

26. To facilitate the sale, certain contracts, leases, joint operating agreements, or other executory contracts (“**Assumed and Assigned Contracts**” or “**Contracts**”) may, at the option and election of the Buyer or Successful Bidder and subject to the limitations of the PSA, be assumed by Debtor and assigned to the Successful Bidder.

27. Pursuant to the PSA, Debtor intends to assume and assign to the Successful Bidder all of Debtor’s interest in and to its Mineral Leases for its operated Wells at Closing. Cure Costs for payment of unpaid prepetition royalties for Debtor’s Mineral Leases shall be paid at Closing, subject to the limitations set forth in the PSA.

28. Pursuant to the PSA, Debtor intends to assume and assign to the Successful Bidder all of Debtor’s interest in and to the Joint Operating Agreements for its operated Wells at Closing. Cure Costs for payments of unpaid working interest owner payments for Debtor’s operated Wells shall be paid at Closing, subject to the limitations set forth in the PSA.

29. Debtor proposes to assume and assign to the Successful Bidder other Contracts as may be identified and determined by agreement with Debtor. Debtor shall serve an Assumption and Assignment Notice as soon as practicable after identification of said Contracts, which shall fix the cure amounts owed on such Contracts, if any. Cure Costs for other Contracts are subject to the limitations set forth in the PSA.

30. The Assumption and Assignment Notice shall set forth the following information: (i) the Contract(s) that may be assumed by the Debtor and assigned to the Successful Bidder; (ii) the name and address of the Contract counterparty thereto; (iii) the cure amount, if any, determined by the Debtor necessary to be paid to cure any existing default in accordance with 11 U.S.C. §§ 365(b) and 365(f)(2); and (iv) the deadlines by which any such Contract counterparty must file an objection to the proposed assumption and assignment of any Assumed and Assigned Contract.

31. All objections, including without limitation any objection to the Debtor's proposed cure amount or the provision of adequate assurance of future performance pursuant to 11 U.S.C. §365, must: (a) identify the Contract to which the objector is party; (b) describe with particularity any cure the claimant contends is required under Section 365, and identify the basis of the alleged claim under the Contract; (c) attach all documents supporting or evidencing the claim; and (d) if the response contains an objection to adequate assurance of future performance, state with specificity what the objecting party believes is required to provide such adequate protection. In addition, all objections must follow the "**Objection Procedures**" as set forth below.

32. If no objection is timely and properly filed and served in accordance with the Objection Procedures, herein, then the cure amount set forth in Debtor's Assumption and Assignment Notice shall be controlling, notwithstanding anything to the contrary in any Contract or other document. The non-debtor party to the Contract shall be forever barred from asserting any other claim arising prior to the assignment against the Debtor or Successful Bidder as to such Contract if it is assumed and assigned. The Successful Bidder's promise to perform under the Contract shall be deemed adequate assurance under the Contract. To the extent the Debtors dispute any cure claim, such dispute shall be presented to the Court at the Sale Hearing, or such earlier or later date and time as the Debtor and the objector may agree or the Court may order. Such dispute shall not affect in any way the effectiveness of any assumption and assignment of a Contract.

Objection Procedures

33. **Objection Procedures.** All objections to the Sale of the Purchased Assets or to the assumption and assignment of the Assumed and Assigned Contracts must be: (a) in writing; (b) signed by counsel or attested to by the objecting party; (c) in conformity with the Bankruptcy Rules and the Local Rules of the Court; (d) filed with the Bankruptcy Court, by no later than 5:00

p.m. (Montana Time) on **January 10, 2017**; provided, however, that any party may object based on events occurring at the Auction, if any, until **3:00 p.m. (Montana Time)** on the day prior to the Sale Hearing; and (e) served in accordance with the Local Rules so as to be received on or before the relevant objection deadline by the following:

(i) counsel for the Debtor, Jeffery A. Hunnes, Guthals, Hunnes & Reuss, P.C. P.O. Box 1977, Billings, MT 59101;

(ii) Office of the United States Trustee, 301 Central Ave, Suite 204, Great Falls, MT 59401-3113.

Each objection must clearly shall state the legal and factual basis of such objection.

BASIS FOR RELIEF

A. An Immediate Sale pursuant to 11 U.S.C. §363 is Necessary and Justified in Debtor's Reasonable Business Judgment.

34. Section 363 of the Bankruptcy Code and bankruptcy court case law support the Court's authority to approve the sale contemplated by this Sale Motion, the PSA, and the proposed Sale and Bidding Procedures. Section 363(b)(1) provides that "[t]he Trustee, after notice and hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." Bankruptcy Rule 6004(f)(1) provides that a sale of property outside of the ordinary course of business may be by private sale or public auction.

35. A bankruptcy court can authorize a sale of all of a Chapter 11 debtor's assets under §363(b)(1) when a sound business purpose dictates such action. *Stephens Industries, Inc. v. McClung*, 789 F. 2d 386, 390 (6th Cir. 1986). This Bankruptcy Code section generally permits a trustee to sell property of the estate outside of the ordinary course of its business where the proposed sale is a sound exercise of business judgment and when such sale is proposed in good faith. See, *In re Lionel Corp.*, 722 F. 2d 1063 (2nd Cir. 1983), *In re 240 North Brand Partners*,

Ltd., 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996), *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143 (3d Cir. 1992)

36. A bankruptcy trustee's decision to sell assets outside the ordinary course is accorded deference by a bankruptcy court where it is supported by the trustee's reasonable business judgment and an articulated business justification for the transaction. *In re Lahijani*, 325 B.R. 282, 289 (B.A.P. 9th Cir. 2005), *In re Chateaugay Corp.*, 973 F.2d 141, 143 (2d Cir. 1992), *In re Phoenix Steel Corp.*, 82 B.R. 334, (Bankr. D. Del. 1987). Courts have also permitted a proposed sale of all or substantially all assets of a debtor outside the ordinary course of business if such a sale is necessary to preserve the value of assets for the estate, its creditors or interest holders. *Equity Funding Corp. of America v. Financial Associates*, 492 F. 2d 793, 794 (9th Cir. 1974). In *In re Work Recovery, Inc.*, 202 B.R. 301, 305 (Bankr. D. Ariz. 1996) the Court authorized a Section 363 sale outside of a Chapter 11 plan where the sale was fair and arm's-length and in the best interest of the estate.

37. The "sound business reason" test requires a debtor-in-possession to establish four elements to justify sale: (1) that a sound business purpose justifies the sale of assets outside the ordinary course of business; (2) that accurate and reasonable notice has been provided to interested persons; (3) that the trustee has obtained a fair and reasonable price; and (4) good faith. *In re Lionel*, at 1070, *Abbotts Dairies*, 788 F.2d 143, *In re Titusville Country Club*, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991).

38. Debtor's decision to proceed with the proposed sale of assets is based upon its sound business judgment and should be approved. The proposed sale of Debtor's assets pursuant to this Sale Motion, the proposed Sale and Bidding Procedures, and the PSA is made in good faith and by exercise of sound business judgment.

39. The proposed sale is reasonable and appropriate for the following reasons. First, Debtor is at risk of running out of operating capital and having its Mineral Leases terminated through nonpayment of royalties and failure to produce under its Mineral Leases. In the absence of a sale, the value of Debtor's assets are likely to deteriorate further or be lost. Second, an expedited sale of Debtor's assets will minimize administrative expenses and provide a greater distribution to creditors. Third, Debtor seeks to establish notice procedures whereby other prospective bidders or parties in interest would have the opportunity to bid on the assets, and parties in interest can submit objections to the proposed sale. Fourth, the proposed sale under the PSA was negotiated at arm's-length and good faith and represents the best offer Debtor has been able to obtain for its assets after significant effort. Finally, the proposed sale will bring the greatest consideration to the Debtor's creditors and will allow for the continued operation of the business subsequent to closing of the sale. As such, the proposed sale furthers the interests of Debtor's estate, creditors and other parties in interest.

B. The Proposed Sale and Bidding Procedures are Reasonable and Should be Approved.

40. Generally, to obtain approval of a proposed sale of assets, a debtor must demonstrate that the "proffered price is the highest and best offer" under the circumstances of the case. See, e.g., *In re Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997). The paramount goal of any proposed sale of property of a debtor is to maximize the value received by the estate. See, e.g. *In re Psychrometric Sys., Inc.* 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Integrated Resources*, 147 B.R. 650, 659 (S.D.N.Y. 1992) ("It is a well-established principle of bankruptcy law that the ... Debtor's duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate").

41. The implementation of competitive bidding procedures to facilitate the sale of a debtor's assets outside the ordinary course of a debtor's business is regularly approved by bankruptcy courts as a means to ensure that the sale will generate the highest and best return for a debtor's estate.

42. Debtor submits that the proposed Sale and Bidding Procedures and the opportunity for competitive bidding therein are reasonable and designed to maximize the value of Debtor's estate and therefore should be approved by this Court.

43. Given Debtor's present liquidity constraints and its obligations to its creditors, Debtor believes that a prompt sale process is the best way to maximize the value of its assets for the benefit of Debtor's estate and creditors.

44. Debtor has marketed its assets for a potential sale extensively prior to the Petition Date and has determined that the PSA is the best offer that it could obtain in its current circumstances.

45. Bankruptcy Courts have made it clear that a debtor's business judgment is entitled to substantial deference with respect to the bid procedures to be used in selling assets of the estate. In *In Integrated Resources*, supra., the court noted that overbid procedures and break-up fee arrangements that have been negotiated by a debtor are to be reviewed accorded to the deferential "business judgment" standard, under which such procedures are 'presumptively valid. Here the proposed Sale and Bidding Procedures are reasonable, appropriate, and within Debtor's sound business judgment because they will serve to maximize the value of the Debtor's estate, preserve and protect its assets, and provide a stalking horse offer as a floor price for the benefit of the estate.

C. Sale of Debtor's Purchased Assets Should Be Free and Clear of Claims and Interests.

46. Section 363(f) of the Bankruptcy Code authorizes a debtor-in-possession to sell property of the estate outside of the ordinary course of business, free and clear of any interest in such property only if:

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

47. Section 363(f) is written in the disjunctive, such that satisfaction of any one of the requirements would justify a sale free and clear under this Section. *In re Elliot*, 94 B.R. 343, 345 (E.D. Pa. 1988), *Citicorp Homeowners Services, Inc. v. Elliot*, 94 B.R. 343, 345 (E.D. Pa. 1988).

48. Debtor submits that each Lien that is not a “Permitted Encumbrance” or “Assumed Liability” under the PSA satisfies one or more of the conditions of 11 U.S.C. §363(f), and that any such Lien will be adequately protected by having its Lien attach to the net sale proceeds from the sale of the particular asset sold in the same order, priority, dignity and effect that such Lien had immediately prior to such sale.

49. Here, Debtor does not believe that a sale subject to claims and interests could even be effectuated.

50. Debtor has identified royalty owners, working interest owners, and Lien Claimants and will complete updated UCC lien searches and other lien searches to identify other purported lien holders for purpose of the sale. Debtor will serve all such parties and purported lien holders

with notice of this Sale Motion, the Bidding Procedures Order and the Sale Notice approved by the Court.

51. In the event any secured creditors object to the proposed sale, Debtor contends that (a) applicable non-bankruptcy law permits sale of the assets free and clear of such creditors' claims, (b) their interests are disputed, or (c) such creditors could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of their claims.

52. Debtor believes that creditors should consent to the sale subject to attachment of Liens to the net sale proceeds because it is the best practical and business decision to optimize return to the creditors asserting interests and the estate. In addition, Debtor believes that it can satisfy the first, fourth and/or fifth elements of Section 363(f) to comply with the statutory requirement to approve the sale free and clear of interests. Indeed, some courts have held that they have the equitable power to authorize sales free and clear of interests that are not specifically covered by Section 363(f). See e.g., *In re Trans World Airlines, Inc.*, 2001 WL 1820325 at *3, 6 (Bankr. D. Del. March 27, 2001); *In re White Motor Credit Corp.*, 75 B.R. 944, 948 (Bankr. E.D. Ohio 1987).

53. Debtor submits that the proposed sale of its assets free and clear of interests is justified in this case, and that such sale is in the best interests of the estate and creditors.

D. The Successful Bidder Should Be Granted the Protections of Section 363(m) of the Bankruptcy Code.

54. As will be supplemented at the Sale Hearing, Debtor believes that Buyer and any Successful Bidder should be entitled to the protections afforded by 11 U.S.C §363(m). 11 U.S.C. § 363(m) provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property

in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

55. Misconduct which would destroy a purchaser's good faith status at a judicial sale would include "fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders." *In re Edwards*, 228 B.R. 552 (E.D. Penn. 1998). See also *In re Berkeley Delaware Court, LLC*, 2016 WL 4437616 (9th Cir. 2016).

56. Debtor asserts that Buyer and any Successful Bidder will have negotiated and dealt with Debtor at arm's length and in good faith. Thus, Debtor requests that the Court find that Buyer and the Successful Bidder are entitled to all of the protections of 11 U.S.C. §363(m).

E. The PSA was Negotiated in Good Faith §363(m).

57. Section 363(m) of the Bankruptcy Code provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of Property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such Property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. §363(m). Section 363(n) of the Bankruptcy Code, among other things, provides, in turn, that a trustee may avoid a sale under such section if the sale price was controlled by an agreement among potential bidders as the sale. Although the Bankruptcy Code does not define "good faith," the Third Circuit in *In Re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143 (3d Cir. 1986), held that "[t]he requirement that a Buyer act in good faith...speaks to the integrity of his conduct in the course of the sale proceedings. Typically, the misconduct that would destroy a Buyer's good faith status at a judicial sale involves fraud, collusion between Buyer and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders." 788 F.2d at 147.

58. The PSA was negotiated at arm's-length, without collusion, and in good faith. Neither Debtor nor Buyer have engaged in any conduct that would cause or permit the PSA to be avoided pursuant to 11 U.S.C. §363(n). Debtor requests the Court to find that Buyer has acted in good faith with regard to its proposed purchase under the PSA or potentially at Auction so that the final sale, Buyer or any Successful Bidder receive the fullest protections available to good faith purchasers under Section 363(m) of the Bankruptcy Code.

F. Notice of the Proposed Sale is Reasonable Under the Circumstances.

59. In order to receive the highest and best price for Debtor's assets, Debtor seeks approval to sell its assets, and engage in competitive bidding for the assets soon after this case has been commenced.

60. Such sale must be transacted quickly because Debtor cannot afford to continue to incur the costs associated with operating the assets and preserving their value. Debtor believes the proposed timeline for the sale of the assets is reasonable and warranted, particularly considering Debtor's DIP financing arrangements.

61. Debtor requests that the Court approve the notice procedures outlined herein as being reasonable and appropriate, with said notice procedures resulting in all interested parties having the opportunity to bid or object to the sale of the assets.

G. The Assumption and Assignment of Executory Contracts Should Be Authorized

62. 11 U.S.C. § 365(a) gives the debtor, subject to court approve, the right to "assume or reject any executory contract or unexpired lease." 11 U.S.C. § 365(b)(1) further provides:

If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee – (A) cures, or provides adequate assurance that the trustee will promptly cure, such default . . . (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the

debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and (C) provides adequate assurance of future performance under such contract or lease.

63. 11 U.S.C. § 365(f)(2) provides:

The trustee may assign an executory contract or unexpired lease of the debtor only if -- (A) the trustee assumes such contract or lease in accordance with the provisions of this section; and (B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

64. Adequate assurance of future performance depends on the facts and circumstances of each case, but should be given “practical, pragmatic construction.” *In re Great Northwest Recreation Center, Inc.*, 74 B.R. 846 (D. Mont. 1987). Adequate assurance can be provided by demonstrating the assignee’s financial health and experience in managing the type of enterprise or property assigned. *In re Bygaph, Inc.*, 56 B.R. 596, 605-606 (Bankr. S.D. NY 1986). This of course should take into account the type of obligations and financial requirements imposed under the executory contracts in issue. To the extent the Stalking Horse Bidder and any Alternative Bidders are providing in advance of the Auction financial assurances regarding the ability to close a transaction, Debtor does not expect there to be any significant issues raised in this regard.

65. To the extent any defaults exist under any Assumed and Assigned Contract(s), any such default will be promptly cured or adequate assurance that such default will be cured will be provided prior to the assumption and assignment as set forth in this the Assumption and Assignment Procedures of this motion. If necessary, Debtor will supplement with facts to show the financial capability of the purchaser and its willingness and ability to perform under the Assumed and Assigned Contract(s).

66. Debtor will set forth the Contracts it intends to assume and assign, but contends that it is in its exercise of sound business judgment to assume and assign those additional, or other

Assumed and Assigned Contract(s) to the Buyer, in connection with completing the sale, as may be determined by Debtor to be in the best interests of Debtor's creditors. The Debtor and Buyer have agreed in the PSA that the Seller's Mineral Leases and Joint Operating Agreements for its operated Wells will be assumed and assigned to Buyer at Closing, provided that the Cure Costs are not materially different than estimated in the PSA. Other Contracts identified in the PSA are a fundamental part of Debtor's business and the operation of the assets being purchased/sold, and with their complexity will require further review and assessment to confirm any amounts owing and cure costs therefore. As set forth in the PSA, Debtor and Buyer have agreed that assumption and assignment of such Contracts requires mutual agreement of the parties, no change in the Base Purchase Price resulting from the assumption and/or assignment of the Purchased Contract; and assumption and assignment of any Purchased Contract without cost or Cure Cost to Seller. Debtor requests that the Court authorize Debtor to assume and assign the Assumed and Assigned Contracts pursuant to the procedure set forth herein and in the PSA, and any additional Contracts as may be identified by Debtor.

H. Waiver of Automatic Fourteen-Day Stay Under Bankruptcy Rules 6004(h) and 6006(d)

67. Pursuant to Bankruptcy Rule 6004(h), unless the Court orders otherwise, all orders authorizing the sale of property pursuant to 11 U.S.C. § 363 are automatically stayed for fourteen (14) days after entry of the order. Under Bankruptcy Rule 6006(d), unless the Court orders otherwise, all orders authorizing the assignment of contracts or unexpired leases are automatically stayed for fourteen (14) days after entry of the order. The purpose of these rules is to allow sufficient time for an objecting party to request a stay pending appeal before the order can be implemented. See: Advisory Committee Notes to Fed. R. Bankr. P. 6004(h); Advisory Committee Notes to Fed. R. Bankr. P. 6006(d).

68. These rules, can though, be eliminated to allow a sale to close immediately where there has been no objection to the procedure. 10 Collier on Bankruptcy ¶ 6004.09 (15th ed. 1999). If an objection is filed and overruled, and the objecting party informs the court of its intent to appeal, the stay may be reduced to the amount of time necessary to file such appeal. Id.

69. As stated herein, the value of the assets of the Debtor are potentially diminishing as a result of the continued operational costs and the Debtor's DIP financing. Debtor must close this sale promptly after all closing conditions have been met or waived. Thus, waiver of any applicable stays is appropriate in this circumstance.

WHEREFORE, Debtor respectfully requests the Court to enter Orders as follows:

1. Approving the Sale and Bidding Procedures, including the Stalking Horse Bidder and the Break-Up Fee, outlined herein and in the proposed Bidding Procedures Order attached hereto as Exhibit B;

2. Scheduling the Bid Deadline, Auction and the Sale Hearing, and Debtor requests the following dates:

Bid Deadline	January 9, 2017
Auction	January 17, 2017
Sale Hearing	January 20, 2017;

3. Approving the form of Notice of Sale and Bidding Procedures to creditors and parties in interest in the form attached hereto as Exhibit C;

4. Approving the Assumption and Assignment Procedures outlined herein and the notice provisions proposed;

5. At the conclusion of the Sale Hearing, to enter a Sale Order in a form to be submitted to the Court by Debtor's counsel approving the sale of all or substantially all of the

Debtor's assets free and clear of all Liens pursuant to the PSA, or a qualified Purchase and Sale Agreement with the Successful Bidder, with all such Liens attaching to the net proceeds received from the sale of the particular asset sold in the same order, priority, dignity and effect that such Lien had immediately prior to such sale;

6. Ordering that the net sale proceeds be deposited in a separate account pending further order of the Court; and

7. For such other and further relief as the Court deems just and proper.

DATED this 4th day of November, 2016.

GUTHALS, HUNNES & REUSS, P.C.
P.O. Box 1977
Billings, MT 59103

 /s/ Jeffery A. Hunnes

Attorneys for Mountain Divide, LLC

EXHIBIT A

ASSET PURCHASE AND SALE AGREEMENT

between

MOUNTAIN DIVIDE, LLC

(“Seller”),

DEEP RIVER OPERATING, LLC

(“Deep River”)

and

FUTURE ACQUISITION COMPANY, LLC

(“FAC”)

November [], 2016

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ASSET PURCHASE AND SALE AGREEMENT

This Asset Purchase and Sale Agreement dated November [3], 2016 (the “**Agreement**”) is between **MOUNTAIN DIVIDE, LLC**, a Montana limited liability company, P.O. Box 200, Cut Bank, Montana 59427 (“**Seller**”), **DEEP RIVER OPERATING, LLC**, a Wyoming limited liability company, P.O. Box 68, Morrison, Colorado 80465 (“**Deep River**”) and **FUTURE ACQUISITION COMPANY, LLC**, a Texas limited liability company, 9990 Richmond Ave #202S, Houston, TX 77042 (“**FAC**” and together with Deep River, collectively the “**Buyer**”). Seller and Buyer are sometimes referred to individually as a “**Party**” and, collectively, as the “**Parties**”.

Recitals

WHEREAS, Seller is engaged in the business of oil and gas exploration, development and production (the “**Business**”);

WHEREAS, Seller filed a petition for relief under title 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (“**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Montana (“**Bankruptcy Court**”) and the bankruptcy case is identified as Case No. 16-61015-11 (“**Bankruptcy Case**”);

WHEREAS, Buyer desires to purchase and assume, and Seller desires to sell and assign the Purchased Assets as defined herein, in accordance with the terms and subject to the conditions of this Agreement, in accordance with Sections 105, 363 and 365 and other applicable provisions of the Bankruptcy Code and subject to entry of orders by the Bankruptcy Court approving sale of the Purchased Assets free and clear of liens and encumbrances; and, approving Sale and Bidding Procedures relating the sale of the Purchased Assets and a Sale Order (all as defined below);

NOW, THEREFORE, in consideration of the respective covenants, representations, warranties and agreements contained herein, and intending to be legally bound, the Parties hereby agree as follows:

ARTICLE I DEFINITIONS

1.1. **Definitions**. The following definitions shall apply in this Agreement:

“**Accrued Suspense Amounts**” has the meaning ascribed to the term in Section 4.12(c) of the Agreement.

“**Affiliate**” means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is in common control with, such Person, and the term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by contract or otherwise.

“**Acquisition**” means the acquisition of the Purchased Assets by Buyer and transactions contemplated by this Agreement and the Ancillary Agreements.

“**Ancillary Agreements**” means the Assignment and Assumption Agreement and the Assignment, Conveyance and the Bill of Sale.

“**Assignment and Assumption Agreement**” means the Assignment and Assumption Agreement to be executed by the Seller and the Buyer on the Closing Date, in form and substance reasonably acceptable to the Seller and the Buyer.

“**Assignment, Conveyance and Bill of Sale**” means the Assignment, Conveyance, and Bill of Sale to be executed by the Seller and the Buyer on the Closing Date, in form and substance reasonably acceptable to the Seller and the Buyer.

“**Avoidance Actions**” means all Claims, rights and remedies of a debtor assertable or arising under Chapter 5 of the Bankruptcy Code or any other applicable law, including without limitation, all preference, fraudulent transfer and other Claims to avoid a transfer.

“**Bankruptcy Code**” shall have the meaning ascribed to the term in the Recitals.

“**Bankruptcy Court**” shall have the meaning ascribed to the term in the Recitals.

“**Bankruptcy Case**” shall have the meaning ascribed to the term in the Recitals.

“**Bankruptcy Expenses**” shall have the meaning ascribed to the term in Section 2.4 of the Agreement.

“**Bankruptcy Laws**” shall mean the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and any applicable local rules and chambers rules and of the Bankruptcy Court.

“**Base Purchase Price**” shall have the meaning ascribed to the term in Section 3.1 of the Agreement.

“**Business**” shall have the meaning ascribed to the term in the Recitals.

“**Business Day**” means each calendar day except Saturdays, Sundays, and federal holidays.

“**Buyer**” shall have the meaning ascribed to the term in the opening paragraph of this Agreement.

“**Cash Consideration**” shall have the meaning ascribed to the term in Section 3.1 of the Agreement.

“**Cash Collateral Order**” shall mean one or more orders of the Bankruptcy Court entered in the Bankruptcy Case authorizing Seller to use cash collateral, all of which cash collateral is subject to the Lien of the Senior Lender.

“Causes of Action” means all Claims and causes of action (of any kind or character and whether arising prior to, on or after the date of the commencement of a bankruptcy case), including, without limitation, the Avoidance Actions, that Seller may have against any other Person.

“Claim” means any and all claims, demands, suits, causes of action, losses, damages, liabilities, fines, penalties, costs and expenses (including attorneys’ fees and costs of litigation, arbitration and settlements), whether known or unknown.

“Closing” shall have the meaning ascribed to the term in Section 3.5 of the Agreement.

“Closing Date” shall have the meaning ascribed to the term in Section 3.5 of the Agreement.

“Contracts” means any contract, agreement, commitment, promise or undertaking (including any indenture, note, bond or other evidence of indebtedness, instrument, license, lease, purchase order or other legally binding agreement) whether written or oral, except for any instrument creating or evidencing any real property interest, including the Mineral Leases and any easements or rights-of-way.

“Cure Costs” means amounts that must be paid and obligations that otherwise must be satisfied under Sections 365(b)(1)(A) and (B) of the Bankruptcy Code in connection with the assumption by Seller and/or assignment to Buyer of any Mineral Leases, Purchased Contracts, or Joint Operating Agreements as provided herein. Cure Costs include the amounts to be paid to royalty owners in Schedule 4.12(a)(i) and to working interest owners in Schedule 4.12(a)(ii), but excludes payment of any Accrued Suspense Amounts as set forth on Schedules 4.12(c)(i) and 4.12(c)(ii).

“Defensible Title” means such record and beneficial title of Seller that, as of the Effective Time and as of the Closing Date:

- (a) with respect to those certain properties described on Exhibit A:
 - (i) is free and clear of all liens, charges, obligations, defects and encumbrances, except for Permitted Encumbrances;
 - (ii) with respect to each Well and Unit, entitles Seller to receive not less than the Net Revenue Interest set forth on Exhibit A in all Hydrocarbons produced from each such Well and Unit without reduction at any time during the life thereof;
 - (iii) obligates Seller to bear not more than the Working Interest set forth on Exhibit A in the properties without increase at any time during the life or abandonment thereof;
 - (iv) with respect to each Mineral Lease, such Mineral Lease is held by production;
 - (v) does not include any surface or subsurface restrictions that materially interfere with the drilling of a new well on the Mineral Leases; and

(b) with respect to all other properties not described on Exhibit A, title that is good and valid title and free and clear of all liens, charges, lis pendens, judgments, obligations (including contract obligations), defects and encumbrances, except for Permitted Encumbrances.

“**Deposit**” shall have the meaning ascribed to the term in Section 3.1 of the Agreement.

“**Effective Time**” shall have the meaning ascribed to the term in Section 2.9(a) of this Agreement.

“**Environmental Defect**” means: (a) any violation of, or condition or circumstance giving rise to liability under, any Environmental Law on any Real property or with respect to any Purchased Asset, or which arises from ownership, record keeping, construction, maintenance, repair or operation thereof; or (b) any condition or circumstance with respect to any Real Property or Purchased Asset, or the ownership, record keeping, construction, maintenance, repair or operation thereof, which could (with notice or the lapse of time or both) result in or give rise to, any violation of Environmental Law or any Environmental Liabilities and Obligations.

“**Environmental Law**” means all applicable Laws concerning or relating to (a) prevention of pollution or environmental damage, (b) removal or remediation of pollution or environmental damage, or (c) protection of the environment (including natural resources) or workplace health or safety, including the Clean Air Act, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“**CERCLA**”), the Federal Water Pollution Control Act (the “**Clean Water Act**”), the Safe Drinking Water Act, the Toxic Substance Control Act, the Resource Conservation and Recovery Act, the Hazardous Materials Transportation Act, the National Environmental Policy Act, the Endangered Species Act, the Fish and Wildlife Coordination Act, the National Historic Preservation Act, the Oil Pollution Act of 1990 and the Occupational Safety and Health Act, as such Laws may be amended through the date of this Agreement.

“**Environmental Liabilities and Obligations**” means all Liabilities arising from or related to any impairment or damage to the environment (including ambient air, indoor, air, surface water, groundwater, land surfaces, sediment or subsurface strata) or natural resources, failure to comply with Environmental Law, or the Release of or exposure to Hazardous Materials: (a) in connection with the prior or ongoing ownership or operation of the Business; or (b) on, in, under, to or from the Real Property or any other real property currently or formerly owned, operated, occupied or leased in connection with the ongoing or prior or operation of Business, including but not limited to Liabilities related to: (i) the handling, generation, treatment, transportation, storage, use, arrangement for disposal or disposal, manufacture, distribution, formulation, packaging or labeling of Hazardous Materials; (ii) the Release of or exposure to Hazardous Materials; (iii) any other pollution or contamination of the surface, substrata, soil, air, ground water, surface water or marine environments; (iv) any other obligations imposed under Environmental Laws with respect to the Business, the Real Property or the Purchased Assets; and (v) all other damages and losses arising under applicable Law as a result of any of the matters identified in clauses (b)(i)-(iv) of this definition.

“**Equipment**” shall have the meaning ascribed to the term in Section 2.1(g) of the Agreement.

“**Escrow Agent**” means Guthals, Hunnes & Reuss, P.C.

“**Escrow Agreement**” means an escrow agreement, by and among the Buyer, the Seller and the Escrow Agent, substantially in the form attached as Exhibit F.

“**Excluded Assets**” shall have the meaning ascribed to the term in Section 2.2 of the Agreement.

“**Excluded Liabilities**” shall have the meaning ascribed to the term in Section 2.4 of the Agreement.

“**Final Order**” means an order, ruling, decision, verdict, decree, writ, subpoena, mandate, precept, command, directive, consent, approval, award, judgment, injunction or other similar determination or finding by, before, or under the supervision of the Bankruptcy Court, or other court of competent jurisdiction with respect to the subject matter, (i) which has not been reversed, stayed, modified, amended, enjoined, set aside, annulled or suspended and (ii) with respect to which no stay shall have been issued in connection with any notice of appeal or petition for certiorari filed within any deadline provided by applicable Law or any deadline provided by applicable Law to file any such notice of appeal or petition for certiorari shall have passed without any such notice of appeal or petition for certiorari having been filed.

“**Final Settlement Statement**” shall have the meaning ascribed to the term in Section 3.4 of the Agreement.

“**Final Purchase Price**” shall have the meaning ascribed to the term in Section 3.4 of the Agreement.

“**GAAP**” means United States generally accepted accounting principles.

“**Governmental Body**” means any government or governmental or regulatory body thereof, or political subdivision thereof, or any agency, authority, department, commission, board, bureau, official or instrumentality of such body, whether foreign, federal, tribal, state or local, or any agency, instrumentality or authority thereof, or any court or arbitrator thereof of competent jurisdiction.

“**Hazardous Material**” means any substance, material or waste which is regulated by any Governmental Body, including petroleum and its by-products, asbestos, and any material or substance which is defined as a “hazardous waste,” “hazardous substance,” “hazardous material,” “restricted hazardous waste,” “industrial waste,” “solid waste,” “contaminant,” “pollutant,” “toxic waste” or “toxic substance” or otherwise regulated under any provision of Environmental Law or for which Liability can be imposed of any Environmental Law.

“**Hydrocarbons**” means oil, gas and other liquid or gaseous hydrocarbons or any combination of the forgoing or fractions or constituents thereof.

“**Income Taxes**” means any income, franchise and similar Taxes.

“Indebtedness” of any Person means, without duplication: (a) the principal of and premium (if any) in respect of (i) indebtedness of such Person for money borrowed and (ii) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable; (b) all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations of such Person and all obligations of such Person under an title retention agreement (but excluding trade accounts payable and other accrued current liabilities arising in the ordinary course of business); (c) all obligations of such Person under leases required to be capitalized in accordance with GAAP; (d) all obligations of such Person for the reimbursement of any obligor on any letter of credit, bankers’ acceptance or similar credit transaction; (e) any accrued interest, premiums, penalties, breakages, “make whole amounts” and other obligations relating to the foregoing that would be payable in connection with the repayment of the foregoing; (f) all obligations of the type referred to in clauses (a) through (e) of any Persons for the payment of which such Person is responsible or liable, directly or indirectly, as obligor, guarantor, surety or otherwise, including guarantees of such obligations; and (g) all obligations of the type referred to in clauses (a) through (f) of other Persons secured by any Lien on any property or asset of such Person (whether or not such obligation is assumed by such Person).

“Joint Operating Agreement(s)” has the meaning ascribed to the term in Section 2.1(d) of the Agreement. Joint Operating Agreement does not include any joint operating agreement entered into with respect to Seller’s non-operated wells identified on Schedule 2.1(d); or entered into with respect to Seller’s interest in the equipment and well bores for the BJNJ 19-18N-1H Well and the Aaberg 8-5N-1H Well.

“Knowledge” means (a) when used in connection with a Person who is an individual, the actual knowledge of that Person and the knowledge that such Person would have obtained after making reasonable inquiry and reasonable diligence with respect to the particular fact or matter in question, and (b), when used in connection with a Person who is a corporation, limited liability company, partnership or other entity, the actual knowledge of the officers, directors, managers or employees of the specified Person charged with responsibility for the particular function with respect to the particular fact or matter in question and the knowledge that same would have obtained after making reasonable inquiry and reasonable diligence.

“Law” means any and all laws, statutes, codes, ordinances, permits, licenses, authorizations, agreements, decrees, writs, orders, judgments, principles of common law, rules or regulations (including, for the avoidance of doubt, Environmental Laws) that are promulgated, issued or enacted by a Governmental Authority having jurisdiction.

“Leases” has the meaning ascribed to the term in Section 2.1(a) of the Agreement as part of the defined term “Mineral Leases”.

“Lease Burdens” means the royalties, overriding royalties, production payments, net profit interests, and all similar interests burdening the Mineral Leases or production therefrom.

“Legal Proceeding” means any claim, demand, litigation, action, cause of action, suit, audit, dispute, review, hearing, charge, indictment, complaint or other judicial or administrative

proceeding, at law or in equity, before or by any Governmental Body or arbitration or other similar dispute resolution proceeding.

“Liabilities” means all obligations (whether absolute, accrued, contingent, fixed or otherwise, or whether due or to become due), including for borrowed money, obligations evidenced by notes, bonds, debentures or similar instruments, obligations for the deferred purchase price of goods or services, obligations under capital leases, or guarantees of any of the foregoing.

“Liens” means any and all mortgages, materialmen’s or mechanics’ liens, security interests, claims, and/or other liens, pledges or other encumbrances, any and all burdens, and any and all assessments, levies, carried interests, defects or irregularities (including irregularities of title).

“Material Adverse Effect” means any change (or changes taken together) in, or effect on, the Purchased Assets, the Business or Seller, that is materially adverse to the operations, condition or prospects (financial or otherwise) of the Purchased Assets, the Business or Seller provided, however, that Material Adverse Effect shall not mean and include the event of the commencement of a Bankruptcy Case under the Bankruptcy Code.

“Mineral Interests” shall have the meaning ascribed to the term in Section 2.1(a) of the Agreement.

“Mineral Leases” shall have the meaning ascribed to the term in Section 2.1(a) of the Agreement.

“Net Revenue Interest” means Seller’s interest in and to all production of Hydrocarbons produced, saved and sold from any Property after giving effect to all Burdens.

“Necessary Consent” shall have the meaning ascribed to the term in Section 2.5 of the Agreement.

“Petition Date” shall mean the date of filing of the Bankruptcy Case, which is October 14, 2016.

“Permits” means any approval, authorizations, consents, franchises, licenses, permits, waivers, operating permits, qualifications, grants, concessions, exceptions, rulings, variances, registrations, certificates, or other forms of permission, exemptions, plans and the like, of any Governmental Body.

“Permitted Liens” means:

(a) Lease Burdens which do not reduce Seller’s Net Revenue Interest in any Well to less than that described in Exhibit A;

(b) (i) the Assumed Liabilities and (ii) all operating agreements, unit agreements, unitization and pooling designations and declarations, gathering and transportation agreements, processing agreements, gas, oil and liquids purchase, sale and exchange agreements, and other

similar agreements which are Purchased Contracts, so long as in the case of this clause, (1) such agreements do not reduce Seller's Net Revenue Interest in any Well to less than that described in Exhibit A or increase Seller's Working Interest in any Well above that shown in Exhibit A, without a proportionate increase in the Net Revenue Interest of Seller; (2) all amounts due and payable by Seller thereunder have been paid or will be paid at or prior to Closing;

(c) regulatory authority of governmental agencies not presently or previously violated, easements, surface leases and rights, plat restrictions and similar encumbrances, provided that they do not materially detract from the value or materially increase the cost of operation of the Well or other Purchased Asset affected thereby or otherwise adversely affect the operation thereof;

(d) consents to assignment required from state and federal governments, Indian tribes and similar authorities that customarily are obtained following the delivery of an assignment;

(e) conventional rights of reassignment obligating Seller to reassign or offer to reassign its interest in any Mineral Lease upon a final release or abandonment of such Mineral Lease;

(f) liens, charges, encumbrances and irregularities in title that have been cured by possession because of (i) prescription, (ii) applicable statutes of limitation for adverse possession or (iii) marketable title or other similar Laws or the doctrine of laches, in each case unless affirmative evidence shows that another Person has a superior claim of title to the Purchased Assets;

(g) statutory Liens for current period Taxes not yet delinquent or the amount or validity of which is being contested in good faith by appropriate proceedings for which adequate accruals or reserves have been established in accordance with GAAP on Seller's financial statements consistent with past practices;

(h) zoning, entitlement and other land use by any Governmental Body provided that such regulations have not been violated;

(i) any other minor imperfections in title, charges, easements, restrictions, licenses and encumbrances that (i) do not interfere with the ordinary course of business, (ii) would not and would not reasonably be expected to, whether individually or in the aggregate, materially affect the value of the Purchased Assets and the present use or operation of such Purchased Assets and (iii) do not reduce Seller's Net Revenue Interest in any Well to less than that described in Exhibit A or increase the applicable Seller's Working Interest in any Well above that shown in Exhibit A, without a proportionate increase in the Net Revenue Interest of Seller; provided, however, that, in the case of each of clauses (a) – (i) of this definition, none of such items secures, arises from, constitutes or relates to any Indebtedness or Excluded Liabilities or obligations under any Excluded Contracts; and

(j) prior to the Closing solely for the purpose of determining Defensible Title, any Liens that will be released by the Sale Order at no cost to Buyer.

“**Person**” means an individual, group, partnership, corporation, trust or other entity, including Governmental Authorities.

“**Purchase Price**” shall have the meaning ascribed to the term in Section 3.2 of the Agreement.

“**Preferential Purchase Rights**” means any enforceable preferential purchase right, right of first refusal, right of first offer or similar right that is excisable by any Person in respect of an Purchased Asset(s) in connection with the consummation of the transactions contemplated hereby.

“**Preliminary Settlement Statement**” shall have meaning ascribed to the term in Section 3.3 of the Agreement.

“**Production Facilities**” shall have the meaning ascribed to the term in Section 2.1(e) of the Agreement.

“**Property Costs**” means all operating and production expenses and capital expenditures directly attributable to the Purchased Assets incurred in the ordinary course of business in accordance with this Agreement and applicable operating agreements and Contracts, including any general, administrative or overhead costs payable to third parties under such operating agreements and Contracts; provided that “**Property Costs**” shall not include any (a) Periodic Non-Income Taxes, (b) income Taxes, (c) general, administrative or overhead costs of Seller, or (d) amounts incurred to cure or attempting to cure any Title Defect, Environmental Defect or casualty losses.

“**Proposed Final Settlement Statement**” shall have the meaning ascribed to the term in Section 3.4 of the Agreement.

“**Purchased Assets**” shall have the meaning ascribed to the term in Section 2.1 of the Agreement.

“**Purchased Contracts**” means any Contract related to the Business to which Seller is a party that is set forth on Schedule 2.1(c), as such Schedule may be updated by the Buyer and Seller from time to time following the date of this Agreement as set forth in Section 2.1(c).

“**Retained Records**” shall have the meaning ascribed to the term in Section 2.2(c) of the Agreement.

“**Sale and Bidding Procedures**” shall have the meaning ascribed to the term in Section 6.3 of the Agreement.

“**Sale Order**” means an order entered by the Bankruptcy Court:

(a) that was appropriate notice to all parties entitled to notice of the motion to approve the sale of the Purchased Assets, this Agreement or the transactions contemplated hereby;

- (b) that is not subject to stay pending appeal;
- (c) that is in form and substance reasonably acceptable to the Buyer; and

(d) that provides, at a minimum, the following: (i) approval of this Agreement; (ii) authorization of the sale of the Purchased Assets to Buyer pursuant to this Agreement and Sections 363 and 365 of the Bankruptcy Code free and clear of all Liens and all Liabilities of any kind or nature whatsoever, whether at law or in equity, including without limitation, free and clear of any rights or claims based on theories of transferee or successor liability under any applicable Law, whether arising before or after the filing of the petition for relief under Chapter 11 of the Bankruptcy Code on the Petition Date, and any rights or claims based on Excluded Contracts or representing Excluded Liabilities, save and excepting only those Liabilities expressly assumed by the Buyer in writing under this Agreement and Permitted Liens; (iii) Buyer has acted in “good faith” within the meaning of and are entitled to the protections of Section 363(m) of the Bankruptcy Code; (iv) this Agreement was negotiated, proposed and entered into by the Parties without collusion, in good faith and from arm’s length bargaining positions; (v) authorization of assumption and assignment of all of the Purchased Contracts and Joint Operating Agreements pursuant to sections 363 and 365 of the Bankruptcy Code (as required); and (vi) this Agreement and the transactions contemplated hereby may, subject to the terms set forth herein, be enforced specifically against and binding upon, and not subject to rejection or avoidance by Seller or its estate or any Chapter 7 or Chapter 11 trustee of the Seller or other representative of its estate.

“**Seller**” has the meaning ascribed to the term in the opening paragraph of the Agreement.

“**Seller’s Records**” has the meaning ascribed to the term in Section 2.1(h) of the Agreement.

“**Senior Lender**” means Well Fargo Energy Capital, Inc.

“**Taxes**” means (a) all federal, state, local or foreign taxes, charges, levies, fees, imposts, assessments, unclaimed property obligations or similar governmental charges, including all net income, gross receipts, capital, sales, use, ad valorem, value added, transfer, franchise, profits, inventory, capital stock, license, withholding, payroll, employment, social security, escheat, unemployment, excise, severance, stamp, occupation, property and estimated taxes; (b) any item described in clause (a) for which a taxpayer is liable as a transferee or successor, by reason of the regulations under section 1502 of the Code, or by contract, indemnity or otherwise; and (c) all interest, penalties, fines, additions to tax or additional amounts imposed by any Tax Authority in connection with any item described in clause (a) or (b).

“**Title Defect**” means any Lien, charge, obligation (including contract obligation), defect, encumbrance or other matter that renders Seller’s title to any Property less than Defensible Title.

“**Wells**” has the meaning ascribed to the term in Section 2.1(d) of the Agreement.

“**Well Reworking Costs**” means any costs or expenses incurred in connection with the drilling, sidetracking, reworking, completion or recompletion of the Wells listed on Schedule 6.2.

“**Working Interest**” means the interest in and to a property that is burdened with the obligation to bear and pay the costs and expenses associated with the exploration, drilling, development, operation and abandonment of such Property, but without regard to the effect of any Burdens.

ARTICLE II PURCHASE AND SALE OF ASSETS; LIABILITIES; PURCHASE PRICE

2.1 **Purchase and Sale of Assets.** Except for the Excluded Assets, on the terms and conditions set forth in this Agreement, at the Closing, Buyer shall purchase, acquire and accept from Seller, and Seller shall sell, assign, transfer, convey and deliver to Buyer, all of Seller’s right, title and interest in, to and under all assets, properties, rights and interests of every kind and description, tangible or intangible, of Seller used or held for use in conduct of the Business, free and clear of all Liens (other than Permitted Liens) and all Excluded Liabilities (collectively, the “**Purchased Assets**”), including, but not limited to, the following:

(a) all term and fee mineral and royalty interests (the “**Mineral Interests**”) and all oil, gas and/or mineral leases and any ratifications or amendments to such leases together with all leaseholds, record title and operating rights, royalty interests or overriding royalty interests owned by the Seller in such leases (together with the Mineral Interests, the “**Mineral Leases**”), including those Mineral Leases listed on Exhibit A (but excluding Seller’s leasehold or working interests in non-operated Wells);

(b) all unitization and pooling agreements, declarations and orders, and the units created thereby, in each case, to the extent relating to any of the Mineral Leases and the production of Hydrocarbons therefrom;

(c) all Contracts listed in Schedule 2.1(c) that are determined to be included as Purchased Contracts on Schedule 2.1(c) as updated by Buyer and Seller prior to Closing, including any and all audit rights provided for in such Purchased Contracts; provided, however, that Buyer and Seller agree that a determination whether to include any Contract as a Purchased Contract requires further review and due diligence and that inclusion of any Purchased Contract must require: (i) mutual agreement of the Parties to include the Purchased Contract; (ii) no change in the Base Purchase Price resulting from the assumption and/or assignment of the Purchased Contract; and (iii) assumption and assignment of the Purchased Contract without cost or Cure Cost to Seller;

(d) all Joint Operating Agreements listed in Schedule 2.1(d) that are determined to be included as Purchased Assets on Schedule 2.1(d) as updated by Buyer and Seller prior to Closing; provided, however, that Buyer and Seller agree that a determination whether to include any Joint Operating Agreement as a Purchased Asset requires further review and due diligence and that inclusion of any Joint Operating Agreement must require: (i) mutual agreement of the

Parties to assume, assign and include the Joint Operating Agreement; (ii) no material change in the Base Purchase Price resulting from the assumption and/or assignment of the Joint Operating Agreement; and (iii) assumption and assignment of the Joint Operating Agreement without material change in the estimated Cure Cost;

(e) all oil, gas, water supply, and salt water disposal and other wells, whether producing, shut-in or abandoned, that are located on the Mineral Leases or on lands pooled or unitized therewith or used or held for use in the conduct of the Business (the “**Wells**”), including those Wells and the two (2) well bores listed on Exhibit A (but excluding non-operated Wells), and related personal property, fixtures, pipelines, inventory, equipment and improvements located on the Mineral Leases or on lands pooled or unitized therewith and used or obtained in connection with the ownership, exploration, development or operation of the Mineral Leases, or the production, sale, processing, treating, storing, gathering, transportation or disposal of Hydrocarbons, water or any other substance produced therefrom or attributable thereto, set forth on Schedule 2.1(e);

(f) all gathering lines, above-ground facilities or structures, drips, valves, pipes, scrubbers, machinery, gauges, meters, fittings, fixtures, units, tanks, traps, cathodic protection equipment, equipment towers, field separators, liquid extractors, recorders, storage sheds, pump houses, radios and similar equipment related thereto that are used or held for use in conduct of the Business (the “**Production Facilities**”);

(g) all fixed assets, leasehold improvements, production equipment assets, machinery and equipment relating to the Business, including water supply and salt water disposal systems, and all other assets, machinery and equipment that are used or held for use in conduct of the Business, in each case, that are used or held for use in the conduct of Business (the “**Equipment**”);

(h) Permits, easements and rights-of-way used or held for use in the conduct of the Business, including the Permits, easements and rights-of-way set forth on Schedule 2.1(h);

(i) all files, books, data, information and records of Seller relating to the Business and/or the Purchased Assets (but excluding Seller’s Retained Records), including plats, surveys, maps, cross-sections, production records, electric logs, cuttings, cores, core data, pressure data, decline and production curves, well files and related matters, division of interest records, division orders, lease and title files, environmental and regulatory files, title opinions, abstracts of title, title curative documents, lease operating statements, geologic and geophysical data (including interpretive data and analysis) and all other accounting information, marketing reports, statements, gas balancing information and all other documents relating to customers, sales information, supplier lists, records, literature and correspondence (collectively, “**Seller’s Records**”);

(j) all of Seller’s right, title, and interest to the Hydrocarbons produced from the Mineral Leases, products refined and manufactured therefrom and the accounts, revenues and proceeds from the sale thereof to the extent such production has been produced or accrued at or after the Effective Time or is held on the Mineral Leases or in the tanks or is line fill (for the

avoidance of doubt, the Purchased Assets shall not include any Hydrocarbons produced and sold in the ordinary course of business prior to the Effective Time);

(k) Seller's vehicles set forth on Schedule 2.1(k);

(l) all rights, Claims, Causes of Action and credits of Seller relating to any Purchased Asset or Assumed Liability (for the avoidance of doubt, the Purchased Assets shall not include any Claims and Causes of Action relating to or identified as an Excluded Asset including, but not limited to, those identified in Section 2.2(a), (g) and (h)); and

(m) all warranties, guarantees and similar rights related to the Purchased Assets, including warranties and guarantees made by suppliers, manufacturers and contractors under the Purchased Assets to the extent not related to an Excluded Asset, and Claims against suppliers and other third parties in connection with Purchased Contracts.

2.2 **Excluded Assets.** Notwithstanding any other provision of this Agreement, Seller shall, at the Closing, retain, Buyer shall not acquire, and the Purchased Assets shall not include, any right, title or interest in the following assets, properties, rights and interests of Seller (collectively, the "**Excluded Assets**"):

(a) all rights, Claims, Causes of Action and credits to the extent relating to any Excluded Asset or Excluded Liability, including any such item to the extent arising under any guarantee, warranty, indemnity or similar right in favor of Seller in respect of an Excluded Asset or Excluded Liability;

(b) membership interest of Seller or any securities convertible into, exchangeable or exercisable for membership interest or other equity interest of Seller;

(c) any minute books, stock ledgers, corporate seals and stock certificates of Seller, and other similar books and records that Seller is required by Law to retain, including Tax Returns and any supporting documentation related thereto, financial statements and corporate or other entity filings (the "**Retained Records**");

(d) all cash and cash equivalents of Seller;

(e) all Contracts that are not assumed and/or assigned pursuant to Section 2.1(c) ("**Excluded Contracts**") and all Joint Operating Agreements that are not assumed and/or assigned pursuant to Section 2.1(d);

(f) all accounts receivable related to the Business attributable to periods prior to the Effective Time, including proceeds of Hydrocarbons produced and sold prior to the Effective Time;

(g) all Avoidance Actions;

(h) all of Seller's rights, Claims and Causes of Action against American Pipe &

Supply, Co. and others, including, but not limited to, those set forth in the litigation pending in Montana Ninth Judicial District Court for Glacier County under Cause No. DV 15-52;

(i) all post-petition adequate assurance deposits provided to utilities and any deposits provided to suppliers, insurance companies or service providers to Seller on a pre-petition or post-petition basis and all prepaid expenses, prepaid rents, prepaid insurance, and advance payments on contractual obligations;

(j) Seller's reclamation bond or bonds with the State of North Dakota;

(k) refunds, credits and rebates of Taxes for any period or portion thereof prior to or ending on the Closing Date;

(l) Seller's 2015 Ford F350 pickup subject to a Lien in favor of Ford Motor Credit;

(m) Seller's computers and computer equipment, file server and computer and electronic files and contents; provided, however, Buyer shall have the right to obtain electronic files relating to the Assets;

(n) Seller's name;

(o) Seller's non-operated Wells and non-operated leasehold and working interests including those identified on Exhibit A and Schedule 2.1(e) provided, however, that Buyer and Seller agree that a determination whether to include any non-operated Wells and non-operated leasehold and working interests as Purchased Assets requires further review and due diligence and that inclusion of any non-operated Wells or non-operated leasehold and working interests in the Purchased Assets must require: (i) mutual agreement of the Parties to include the non-operated Wells and non-operated leasehold and working interests; (ii) no change in the Base Purchase Price resulting from the assignment of the non-operated Wells and non-operated leasehold and working interests; and (iii) assignment of the non-operated Wells and non-operated leasehold and working interests without cost or cure cost to Seller; and

(p) the Purchase Price, including the Cash Consideration.

2.3 **Assumption of Liabilities.** On the terms and subject to the conditions set forth in this Agreement, at the Closing, the Buyer shall assume, effective as of the Closing, and shall timely perform and discharge in accordance with their respective terms, the following Liabilities of Seller existing as of the Closing Date (collectively, the "**Assumed Liabilities**"):

(a) Any Cure Costs that Buyer is required to pay pursuant to Section 2.6;

(b) Any Transfer Taxes;

(c) Property Costs incurred after the Effective Time for which Buyer is responsible under Section 2.9(b); and

(d) Liabilities for payment and administration of Accrued Suspense Amounts as set forth on Schedules 4.12(c)(i) and 4.12(c)(ii). Buyer agrees to assume liability for all Accrued Suspense Amounts as of the Closing Date and to assume liability and responsibility for administration of Accrued Suspense Amounts thereafter. Buyer shall be entitled to assignment of all receivables of Seller related to Accrued Suspense Amounts as of the Closing Date.

2.4 **Excluded Liabilities.** Buyer shall not assume and shall be deemed not to have assumed, and Seller shall remain liable with respect to, any and all Liabilities of Seller arising out of, relating to or otherwise in respect of the Business, the Employees, or the Purchased Assets prior to the Closing Date, and all other Liabilities of Seller, other than the Assumed Liabilities (collectively, the “**Excluded Liabilities**”), including all of the following Liabilities of Seller:

(a) all Liabilities arising out of or relating to the Business, the Purchased Assets or the ownership, operation or conduct thereof prior to the Closing Date other than Assumed Liabilities;

(b) all Liabilities for accrued expenses and accounts payable of the Business prior to the Closing other than Assumed Liabilities;

(c) all Liabilities relating to the Senior Lender’s obligations or the Cash Collateral Order (including any adequate protection provided pursuant to the Cash Collateral Order);

(d) all Liabilities arising out of any of the Excluded Assets, including Contracts that are not the Purchased Contracts and any other Purchased Asset that Buyer elects to exclude from the Purchased Assets pursuant to Section, or that is otherwise permitted under this Agreement;

(e) all Environmental Liabilities and Obligations, based on facts, occurrences or conditions: (i) first arising or existing on or prior to the Effective Time; or (ii) arising at any time at any properties other than the Real Property, including any Liabilities arising from any disposal of Hazardous Materials off-site of the Real Property prior to the Effective Time, and any fines or penalties or criminal actions imposed in connection with any violation of Environmental Laws prior to the Effective Time; provided, however, that nothing in this Agreement shall: (A) release, nullify, or enjoin the enforcement of any liability to a Governmental Body under Environmental Laws (or any associated liabilities for penalties, damages, cost recovery, or injunctive relief) that any entity would be subject to as the owner, lessor, lessee, or operator of any Real Property after the Effective Time; or (B) in any way diminish the obligations of the Seller to comply with Environmental Laws consistent with their rights and obligations as debtors in possession under the Bankruptcy Code;

(f) except as otherwise expressly provided in this Agreement with respect to Transfer Taxes and Periodic Non-Income Taxes, (i) all Liabilities for Taxes of Seller that are attributable to any period, or portion thereof, before or after the Closing Date and (ii) all liability for Taxes in respect of the Purchased Assets that are attributable to any period, or portion thereof, before the Closing Date;

(g) all Liabilities arising as a result of any Legal Proceedings, whether initiated prior to or following the Closing Date, to the extent related to the Business or the Purchased Assets on or prior to Closing Date, including any actions listed on Schedule 4.8;

(h) all Liabilities arising under any Indebtedness of Seller or any obligations or Liabilities to equity holders of Seller;

(i) all Liabilities with respect to any costs, fees and expenses (including all legal, accounting, financial advisory, valuation, investment banking and other third party advisory or consulting fees and expenses) incurred by or on behalf of Seller in connection with or arising from the Bankruptcy Case or the transactions contemplated by this Agreement, the Ancillary Agreements and each other agreement, document or instrument contemplated hereby or thereby (the “**Bankruptcy Expenses**”);

(j) all Liabilities: (i) existing prior to the filing of the Bankruptcy Case that are subject to compromise under the Bankruptcy Case, other than the Cure Costs with respect to any Purchased Contracts; and (ii) to the extent not otherwise expressly assumed pursuant to Section 2.3, incurred subsequent to the filing of the Bankruptcy Case and prior to the Closing;

(k) all Liabilities relating to any theories of law or equity involving successors or transferees;

(l) all Liabilities and obligations of Seller under this Agreement, the Ancillary Agreements and each other agreement, document or instrument contemplated hereby or thereby or any Contract entered into in connection herewith or therewith;

(m) all Liability, warranty and similar claims for damages, illness or injury to person or property and all other Liabilities, regardless of when made or asserted, to the extent arising out of or incurred in connection with the conduct of Business or the ownership or operation of the Purchased Assets, on or before the Closing Date;

(n) all Liabilities for the gross negligence or willful misconduct of Seller or its Affiliates, regardless of when made or asserted, to the extent arising out of or incurred in connection with the conduct of the Business or the ownership or operation of the Purchased Assets, on or before the Closing Date; and

(o) all Liabilities for any fines or penalties or criminal actions imposed by any Governmental Body, regardless of when made or asserted, to the extent arising out of or incurred in connection with the conduct of Business or the ownership or operation of the Purchased Assets, on or before the Closing Date.

2.5 **Non-Assignment of Assets.** Notwithstanding any other provision of this Agreement to the contrary, this Agreement shall not constitute an agreement to assign or transfer and shall not affect the assignment or transfer of any Purchased Asset if (a) an attempted assignment or transfer thereof, without the approval, authorization or consent of, or granting or issuance of any license or permit by, any third party thereto or a Governmental Body (each such

action, a “**Necessary Consent**”), would constitute a breach, default or violation thereof or of any Law or Order or in any way adversely affect the rights of Buyer thereunder and (b) the Bankruptcy Court has not entered an Order providing that such Necessary Consent is not required. In such event, such assignment or transfer is subject to such Necessary Consent being obtained, and Seller shall use commercially reasonable efforts to obtain the Necessary Consents with respect to any such Purchased Asset or any claim or right or any benefit arising thereunder for the assignment or transfer thereof to Buyer as Buyer may reasonably request. For the avoidance of doubt, any asset that would be a Purchased Asset but is not assigned in accordance with this Section 2.5 shall not be considered a “Purchased Asset” for purposes hereof unless and until such asset is assigned to Buyer following the Closing Date upon receipt of any Necessary Consent and Bankruptcy Court approval. If such Necessary Consent is not obtained, or if an attempted assignment or transfer thereof would be ineffective or would adversely affect the rights of Buyer to such Purchased Asset following the Closing, Seller shall cooperate with Buyer in any reasonable arrangement to provide for Buyer to obtain the benefits and assume the obligations thereunder in accordance with this Agreement, including subcontracting, sub licensing, or sub-leasing to Buyer, or under which Seller would enforce for the benefit of Buyer all of its rights thereunder.

2.6 **Contract Designation; Cure Costs.** As of the date hereof (or such other date as provided), Exhibit A sets forth each Mineral Lease. Buyer and Seller acknowledge and agree that in order to consummate the Acquisition, Seller will assume and assign the Mineral Leases and the Joint Operating Agreements. The Cure Costs for such assumption and assignment shall be paid from the sale proceeds of the Purchased Assets at Closing, subject to the limitations and agreements set forth in this Agreement. Schedule 4.12(a)(i) sets forth Seller’s good faith estimate of the amount of the Cure Costs related to unpaid royalties for such Mineral Leases as of the last date referenced therein. Schedule 4.12(a)(ii) sets forth Seller’s good faith estimate of the amount of the Cure Costs related to unpaid working interest owner obligations for Seller’s operated Wells as of the last date referenced therein. The parties acknowledge that Seller’s Budget provides for payment of royalties and working interest owner payments accrued after the Petition Date up to the Effective Time from its operations, use of cash collateral and postpetition financing. The amount of Cure Costs for assumption and assignment of the Mineral Leases and the Joint Operating Agreements shall be calculated and provision shall be made for payment in full of Cure Costs as of the Closing Date. The amount of the Cure Costs to be paid from the sale proceeds shall not be materially different than the estimated Cure Costs in Schedules 4.12(a)(i) and 4.12(a)(ii), plus additional amounts accrued from the last date referenced in Schedules 4.12(a)(i) and 4.12(a)(ii) to the Petition Date. Notwithstanding any other provision of this Agreement to the contrary, this Agreement shall not constitute an agreement to assign or transfer and shall not affect the assignment or transfer of any of Seller’s Contracts or non-operating leasehold or working interests identified on Exhibit A or Schedule 2.1(c) to the extent Seller is determined to be obligated to assume and pay Cure Costs in order to assign Seller’s Contracts or non-operating leasehold or working interests. Upon further review and due diligence specific Seller’s Contracts and non-operating leasehold or working interests may be included in the Acquisition by agreement of Buyer and Seller and provided such inclusion will not affect the Base Purchase Price or Cure Costs.

2.7 **Further Conveyances and Assumptions.** From time to time following the Closing, Seller and Buyer shall execute, acknowledge and deliver all such further conveyances, notices, assumptions, assignments, releases and other instruments, and shall take such further actions, as may be reasonably necessary or appropriate to assure fully to Buyer and its respective successors or assigns, conveyance of all of the properties, rights, titles, interests, estates, remedies, powers and privileges intended to be conveyed to Buyer under this Agreement and to assure fully to Seller, the assumption of the liabilities and obligations intended to be assumed by Buyer under this Agreement, and to otherwise make effective the transactions contemplated hereby; provided, however, that nothing in this Section 2.7 shall require Buyer or any of its Affiliates to purchase any Assets other than the Purchased Assets or assume any Liabilities other than the Assumed Liabilities.

2.8 **Assignment to Affiliates of the Buyer.** Prior to the Closing, Buyer shall have the right to assign its rights to receive all or any part of the Purchased Assets and its obligations to assume all or any part of the Assumed Liabilities, in each case to one or more Affiliates of Buyer by providing written notice to Seller and each such designated Affiliate shall be deemed to be a Buyer for all purposes hereunder and under the Ancillary Agreements, except that no such assignment shall relieve Buyer of any of its obligations hereunder.

2.9 **Effective Time; Proration.**

(a) Subject to the other terms and conditions of this Agreement, possession of the Purchased Assets shall be transferred from Seller to Buyer at the Closing, but certain financial benefits and burdens of the Purchased Assets, and the ownership thereof, shall be transferred effective as of 7:00 a.m., Montana Time, on the first day of the month in which the Closing occurs (the “**Effective Time**”), as described below.

(b) Buyer shall be entitled to all production of Hydrocarbons from or attributable to the Mineral Leases and the Wells at and after the Effective Time (and all products and proceeds attributable thereto), and to all other income, proceeds, receipts and credits earned with respect to the Purchased Assets at or after the Effective Time and, subject to the terms of this Agreement, shall be responsible for (and entitled to any refunds with respect to) all Property Costs incurred at and after the Effective Time. Should Buyer receive after Closing any proceeds or other income to which Seller is entitled under Section 2.9(c), Buyer shall fully disclose, account for and promptly remit the same to Seller. Should Buyer pay after Closing any Property Costs for which Seller is responsible under Section 2.9(c), Seller shall reimburse Buyer promptly after receipt of an invoice with respect to such Property Costs.

(c) Seller shall be entitled to all production of Hydrocarbons from or attributable to the Mineral Leases and the Wells prior to the Effective Time (and all products and proceeds attributable thereto), and to all other income, proceeds, receipts and credits earned with respect to the Purchased Assets prior to the Effective Time and, subject to the terms of this Agreement, shall be responsible for (and entitled to any refunds with respect to) all Property Costs incurred prior to the Effective Time. Should Seller receive after Closing any proceeds or other income to which Buyer is entitled under Section 2.9(b), Seller shall fully disclose, account for, segregate

and promptly remit the same to Buyer. Until remitted to Buyer or until the Base Purchase Price is reduced in accordance with Section 3.3(b)(ii), such amounts shall be deemed held in trust by Seller and shall not be property of Seller's estate or subject to any Liens whatsoever. Should Seller pay after Closing any Property Costs for which Buyer is responsible under Section 2.9(b), Buyer shall reimburse Seller promptly after receipt of an invoice with respect to such Property Costs.

ARTICLE III PURCHASE PRICE; CLOSING

3.1 **Purchase Price.** Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, and in consideration for the Acquisition, Buyer will pay or cause to be paid an aggregate amount equal to \$3,000,000, subject to adjustment pursuant to the provisions of this Agreement (as so adjusted, the "**Base Purchase Price**"). The Base Purchase Price shall be payable as follows:

(a) As an earnest deposit, \$300,000 (the "**Deposit**") shall be deposited within 48 hours of execution of this Agreement by FAC with the Escrow Agent, who shall hold the Deposit in accordance with the terms of the Escrow Agreement, which Deposit shall be applied to the Base Purchase Price at Closing;

(b) \$2,300,000 shall be paid by Deep River and \$400,000 shall be paid by FAC (the "**Cash Consideration**") to Seller at Closing by wire transfer of immediately available funds denominated in U.S. dollars.

3.2 **Adjustments to Base Purchase Price.** The Base Purchase Price shall be adjusted as follows, with the amount resulting from the below adjustments to the Base Purchase Price hereinafter referred to as the "**Purchase Price**":

(a) The Base Purchase Price shall be adjusted upward by the following amounts (without duplication):

(i) an amount equal to all Property Costs attributable to the ownership and operation of the Purchased Assets which are incurred at or after the Effective Time and prior to the Closing Date but paid by Seller (as is consistent with Section 2.9), but excluding, for the avoidance of doubt, (A) any Periodic Non-Income Taxes, (B) any income Taxes and (C) any amounts previously reimbursed to Seller pursuant to Section 2.9;

(ii) an amount equal to, to the extent that such amounts have been received by Buyer and not remitted or paid to Seller in accordance with Section 2.9, all proceeds from the production of Hydrocarbons from or attributable to the Mineral Leases and the Wells prior to the Effective Time, less any applicable Lease Burdens (which shall have been paid or shall be paid by Buyer); and

(iii) the amount of all Periodic Non-Income Taxes allocated to Buyer in accordance with Section 10.2 but that are paid or otherwise economically borne by Seller.

(b) The Base Purchase Price shall be adjusted downward by the following amounts (without duplication):

(i) an amount equal to all Property Costs attributable to the ownership and operation of the Purchased Assets which are incurred prior to the Effective Time but paid by the Buyer (as is consistent with Section 2.9), but excluding, for the avoidance of doubt, (A) any Periodic Non-Income Taxes, (B) any income Taxes and (C) any amounts previously reimbursed to the Buyer pursuant to Section 2.9;

(ii) an amount equal to, to the extent that such amounts have been received by the Seller and not remitted or paid to Buyer in accordance with Section 2.9, all proceeds from the production of Hydrocarbons from or attributable to the Mineral Leases and Wells at and after the Effective Time, less applicable Lease Burdens (which shall have been paid or shall be paid by Seller) and any other proceeds attributable to the Purchased Assets at and after the Effective Time;

(iii) the amount of all Periodic Non-Income Taxes allocated to Seller in accordance with Section 10.2 but that are paid or otherwise economically borne by Buyer.

3.3 **Preliminary Settlement Statement.** No later than five (5) Business Days prior to the Closing Date, Seller will provide Buyer a good faith preliminary settlement statement (the “**Preliminary Settlement Statement**”) identifying all adjustments to the Base Purchase Price to be made at Closing (and Seller’s calculations as to each such adjustment) and Seller’s resulting estimate of the Purchase Price as of the Closing (the “**Estimated Purchase Price**”). Prior to the Closing, Buyer may deliver to Seller a written report containing any proposed changes Buyer may have to the Preliminary Settlement Statement and the Parties will confer in good faith upon any such proposed changes. The Preliminary Settlement Statement as agreed upon by the Parties will be used to determine the adjustments to the Base Purchase Price at Closing under this Section 3.3. If the Parties are unable to reach an agreement as to the Preliminary Settlement Statement, either Party shall have the right to file with the Bankruptcy Court a motion seeking approval of the Preliminary Settlement Statement proposed by such Party.

3.4 **Final Settlement of Purchase Price.**

(a) As soon as reasonably practicable after the Closing but not later than the 60th day following the Closing Date (the “**Final Settlement Statement Deadline**”), Seller shall prepare and deliver to Buyer a statement setting forth the final calculation of the adjustments to the Base Purchase Price (and Seller’s calculations of each such adjustment) (the “**Proposed Final Settlement Statement**”). Seller shall supply reasonable documentation available to support such calculation. If Seller does not deliver to Buyer a Proposed Final Settlement Statement on or before the Final Settlement Statement Deadline, Buyer shall be entitled to deliver to Seller a Proposed Final Settlement Statement, in which case any reference in the portion of this Section 3.4(a) following this sentence to Seller shall be deemed to be a reference to Buyer and any reference in the portion of this Section 3.4(a) following this sentence to Buyer shall be deemed to be a reference to Seller. As soon as reasonably practicable but not later than the 10th day

following receipt of the Proposed Final Settlement Statement, Buyer may deliver to Seller a written report containing any changes that Buyer proposes be made to the Proposed Final Settlement Statement; provided that if Buyer fails to deliver Seller such a written report within such 10 day period, the Proposed Final Settlement Statement shall be the Final Settlement Statement for all purposes under this Agreement. Seller may deliver a written report to Buyer during this same period reflecting any changes that Seller propose to be made to the Proposed Final Settlement Statement as a result of additional information received after the Proposed Final Settlement Statement was prepared. The parties shall undertake to agree on the final statement of the Purchase Price (the “**Final Settlement Statement**”) no later than 15 days after Seller's delivery of the Proposed Final Settlement Statement to Buyer. In the event that the Parties cannot reach agreement on the Final Settlement Statement within such period of time, each Party shall have the right to file with the Bankruptcy Court a motion seeking approval of the Preliminary Settlement Statement proposed by such Party. The Purchase Price as provided in the Final Settlement Statement is hereinafter referred to as the “**Final Purchase Price.**”

(b) Within ten (10) days after the determination of the Final Settlement Statement:

(i) If the Final Purchase Price exceeds the Estimated Purchase Price, then Buyer shall pay to Seller an amount equal to such excess; or

(ii) If the Estimated Purchase Price exceeds the Final Purchase Price, then Seller shall pay to Buyer an amount equal to such excess.

(c) All payments made or to be made under this Agreement to Seller shall be made by electronic transfer of immediately available funds to the accounts designated by Seller in writing to Buyer. All payments made or to be made under this Agreement to Buyer shall be made by electronic transfer of immediately available funds to the accounts designated by Buyer in writing to Seller.

3.5 **Time and Place of Closing.** In accordance with the Sale Order, the closing of the Acquisition contemplated by this Agreement (the “**Closing**”) shall take place remotely via the exchange of documents and signatures and satisfaction of other conditions hereunder after the later of the following occurs: (i) the approval by the Court of the Sale Order and (ii) the date in which the last of the conditions to Closing set forth in this Agreement have been satisfied or waived (other than those conditions that by their nature can only be satisfied at the Closing), or at such other time and place as Seller and Buyer may agree in writing. The date on which the Closing actually occurs is referred to in this Agreement as the “**Closing Date.**” For all purposes under this Agreement and each of the Ancillary Agreements, all matters at Closing will be considered to take place simultaneously, no delivery of any document will be deemed complete until all transactions and deliveries of documents are completed, and the Closing will be deemed to have occurred at 12:01 Montana Time, on the Closing Date irrespective of the actual occurrence of the Closing at any particular time on the Closing Date.

3.6 **Deliveries by Seller.** At the Closing, Seller shall deliver, or cause to be delivered to Buyer:

- (a) the Purchased Assets (including the originals of any written and descriptions of all other oral Assumed Contracts);
- (b) one or more duly executed Assignment, Conveyance and Bills of Sale;
- (c) one or more duly executed Assignment and Assumption Agreements;
- (d) with respect to properties operated by Seller, change of operator forms and other similar forms required by State regulatory authorities or under applicable joint operating agreements (in form reasonably acceptable to Buyer);
- (e) duly executed and acknowledged assignments of Federal and State leases on forms prescribed therefore;
- (f) letters-in-lieu of transfer orders directed to Buyer of the Hydrocarbons and other remitters of production revenues directing them to make payment to Buyer following the Closing or under applicable joint operating agreements (in form reasonably acceptable to Buyer as set forth on Schedule 3.6(f));
- (g) the Seller's Certificate substantially in the form attached hereto as Exhibit D;
- (h) a certificate executed by Seller that Seller is not a foreign person within the meaning of section 1445(f)(3) of the Code, which certificate shall set for all information required by, and otherwise be executed in accordance with, Treasury Regulation section 1.1445(b)(2), substantially in the form attached hereto as Exhibit C;
- (i) UCC-3 termination statements or amendments, mortgage releases, and other release documents, in form and substance reasonably acceptable to Buyer, from the Senior Lender to evidence the release of any and all Liens of the Senior Lender arising from or relating to the Purchased Assets and all instruments;
- (j) the Seller's Records in accordance with Section 2.1(i);
- (k) a schedule listing the accrued suspense amounts as of the Closing (the "**Accrued Suspense Amounts**");
- (l) all other deeds, endorsements, assignments and other instruments of conveyance, transfer and release, in form and substance reasonably acceptable to Buyer, as may be necessary, to convey and assign the Purchased Assets to Buyer and vest title therein in Buyer (in each case free and clear of all Liens other than Permitted Liens and Excluded Liabilities).

3.7 **Deliveries by Buyer.** At the Closing, Buyer shall deliver to Seller:

- (a) the Cash Consideration; and
- (b) one or more duly executed Assignment, Conveyance and Bills of Sale;

- (c) one or more duly executed Assignment and Assumption Agreements;
- (d) the Buyer's Certificate substantially in the form attached hereto as Exhibit E;
- (e) with respect to properties operated by Seller, change of operator forms and other similar forms required by State regulatory authorities or under applicable joint operating agreements (in form reasonably acceptable to Buyer);
- (f) duly executed and acknowledged assignments of Federal and State leases on forms prescribed therefore;
- (g) letters-in-lieu of transfer orders, prepared by Seller and executed by Buyer, directed to the buyers of the Hydrocarbons and other remitters of production revenues directing them to make payment to Buyer following the Closing.

3.8. **Payment of Cure Costs and Deposit of Sale Proceeds.** At the Closing, the Cure Costs shall be paid from the sale proceeds, subject to the limitations set forth in this Agreement, and the balance of the sale proceeds together with any portion of the Deposit remaining, shall be delivered to the Escrow Agent to be held in a separate account in accordance with the Sale Order. The amount of Cure Costs for assumption and assignment of the Mineral Leases and the Joint Operating Agreements shall be calculated and provision shall be made for payment in full of all Cure Costs as of the Closing Date. The amount of the Cure Costs payable from the sale proceeds shall not be materially different than the estimated Cure Costs in Schedules 4.12(a)(i) and 4.12(a)(ii), plus the additional amounts accrued from the last date referenced in Schedules 4.12(a)(i) and (a)(2) to the Petition Date.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLER

As a material inducement to Buyer to enter into this Agreement and to consummate the transactions contemplated by this Agreement and the Ancillary Agreements, Seller hereby represents and warrants to Buyer that all of the statements contained in this Article IV and made elsewhere in this Agreement by Seller and all information delivered by Seller in any Schedule or exhibit hereto or thereto are true and correct on the date of this Agreement and shall be true and correct as of the Closing as though then made, except to the extent such representations and warranties are specifically made as of the particular date (in which case such representations and warranties will be true and correct as of such date).

4.1 **Organization and Good Standing.** Seller is a limited liability company duly organized and in good standing under the laws of the State of Montana and has all requisite power and authority to carry on the Business as it has been and is now being conducted and to own, lease and operate the Purchased Assets.

4.2 **Authority.** Upon entry of the Sale Order and subject to it becoming a Final

Order, Seller has the requisite power and authority to execute, deliver and perform this Agreement and each Ancillary Agreement to which it is a party, and Seller has taken all actions necessary to secure all approvals required to be secured by it in connection therewith. The execution, delivery and performance by Seller of this Agreement and each Ancillary Agreement to which Seller is a party has been duly authorized by all necessary company action. Upon the entry of the Sale Order and subject to it becoming a Final Order, this Agreement and each Ancillary Agreement to which Seller is a party constitutes or will constitute the legal, valid and binding obligations of Seller, enforceable against it in accordance with its terms.

4.3 **Validity of Contemplated Transactions; Consents and Approvals.** Upon the entry of the Sale Order and subject to it becoming a Final Order, Seller's execution and delivery of this Agreement and each Ancillary Agreement to which it is a party and the consummation of the transactions contemplated hereby or thereby will not (a) contravene or violate its articles of organization or operating agreement or other applicable charter or organizational documents or any Regulation or Court Order that is applicable to Seller, the Purchased Assets or the Business; (b) require Seller to obtain any permit, authorization or approval from, given notice to or make any filing with, any Governmental Authority or any other party; or (c) result in the creation or imposition of any Liens upon the Business or any of the Purchased Assets.

4.4 **Compliance with Law; Court Orders.** Except as otherwise specifically ordered by the Bankruptcy Court, Seller is not in, and the Purchased Assets have not been used by Seller in, violation of any Court Order or Regulation applicable to the Business or to the Purchased Assets. Seller has made all filings and notifications required to be made by it under applicable Law and in connection with the Sale Order.

4.5 **Books of Record; Financial Statements.** The books of account for the Business have been delivered to Buyer and fairly reflect (a) all transactions relating to the Business, and (b) all items of income and expense, and all assets, Liabilities and accruals, relating to the Business.

4.6 **Title to Purchased Assets.** Seller owns outright and has good and indefeasible title to all of the Purchased Assets that are used by it in the Business and not subject to a lease, free and clear of all Liens and Seller has the valid right to use, and enjoy peaceful and undisturbed possession of, all Purchased Assets leased by it in the conduct of the Business; provided that the Senior Lender holds a mortgage and security interest, and other Liens in the Purchased Assets, oil and gas Liens have been filed by several claimants against some of the Purchased Assets, Liens have been filed against some of the Purchased Assets by royalty owners, and all of these Liens shall have been released or discharged pursuant to the Sale Order or Section 3.6(i) of this Agreement at or prior to the Closing.

4.7 **Material Contracts.**

(a) **Contracts and Consents.** Schedule 2.1(c) sets forth a complete and accurate list of or description of all Contracts relating to the Business to which Seller is a party or by which the Business or any of the Purchased Assets is bound or affected.

(b) **Validity and Enforceability.** All of the Contracts set forth on Schedule 2.1(c) are (i) valid, binding, enforceable and in full force and effect in accordance with their terms and (ii) except for the Sale Order and as set forth on Schedule 2.1(c), may be transferred or assigned to Buyer at the Closing without any requirement to provide notice to or obtain the consent or approval of the other parties thereto, and will continue in full force and effect thereafter, in each case without breaching the terms thereof or resulting in the forfeiture or impairment of any material rights thereunder. To Seller's Knowledge, each other party to the Contracts set forth on Schedule 2.1(c) has no present intention to terminate such Contract, is not in material Default under such Contract, and no event has occurred which, with or without the passage of time or the giving of notice or both, would result in a material Default thereunder.

(c) **Joint Operating Agreements.** The joint operating agreements entered into between Seller and certain working interest owners as to the Wells operated by Seller are identified on Schedule 2.1(c) (the "**Joint Operating Agreements**"). Seller does not have joint operating agreements for all of its Wells. The Joint Operating Agreements are not executed by all working interest owners. To Seller's Knowledge, the Joint Operating Agreements are valid, binding, enforceable and in full force and effect in accordance with their terms.

4.8 **Litigation.** Except with respect to the Chapter 11 Case and except with respect to litigation that Buyer has been notified of in writing or disclosed in the bankruptcy schedules and statement of financial affairs in the Bankruptcy Case, there is no Litigation pending relating to Seller, the Business or Purchased Assets. The Business and the Purchased Assets are not subject to any Court Order, other than orders of the Bankruptcy Court.

4.9 **Tax Matters.** All material Tax Returns required to be filed by or with respect to the Seller or the Purchased Assets have been properly prepared and timely filed, and all such Tax Returns are true, complete and correct in all material respects; (b) the Seller has fully and timely paid all Taxes owed by Seller or owed with respect to the Purchased Assets; (c) all withholding tax requirements imposed on or with respect to Seller and the Purchased Assets have been satisfied in full in all respects; (d) no audit or other proceeding by any Governmental Body is active, pending or threatened with respect to any Taxes due from or with respect to Seller or with respect to the Purchased Assets; (e) no Governmental Body has given written notice of any intention to assert any deficiency or claim for additional Taxes against Seller or with respect to the Purchased Assets and no claim has been made by any Governmental Body in a jurisdiction where Seller does not file Tax Returns that it is or may be subject to taxation by that jurisdiction.

4.10 **Environmental Matters.** With respect to the Purchased Assets and the Business, (a) Seller is not the subject of any outstanding Order nor has Seller received any written notice, complaint or inquiry from any Governmental Body or any other Person respecting (i) Environmental Laws, Environmental Permits or Hazardous Materials; (b) there is no investigation or Legal Proceeding pending or threatened that could reasonably be expected to result in Seller or Buyer incurring any material Liability pursuant to any applicable Environmental Law in: connection with the Purchased Assets or the Business, including without limitation, any such Liability relating to the off-site treatment, storage, recycling or handling of any Hazardous Materials by or on behalf of the Seller in connection with the Purchased Assets or the Business; (c) there has been no release of Hazardous Materials and no Person has been

exposed to Hazardous Materials at, to; on, under or from the real property or in connection with the Business in a manner that could result in material Liability under Environmental Laws; (d) Seller is and have been in compliance with Environmental Laws with respect to the Business and the Purchased Assets; and (e) Seller has obtained, maintains and is in material compliance with, and to the extent applicable, have timely filed applications to renew, all Permits which are required under or pursuant to Environmental Laws (the “**Environmental Permits**”) for the ownership or the operation of the Purchased Assets and the Business, all such Environmental Permits are valid and in good standing, Seller has not been advised by any Governmental Body of any actual or potential change in the status or terms and conditions of such Environmental Permit, and all material Environmental Permits held by Seller in connection with the Purchased Assets and the Business have been made available to Buyer. Seller has delivered or made available to Buyer copies of all reports, assessments or tests with respect to compliance of the Business or the Real Property with any Environmental Laws or the presence or Release of Hazardous Material which are in the possession, custody or control of Seller. Neither the execution of this Agreement nor consummation of the transaction contemplated by this Agreement shall require any notification to or consent of any Governmental Body or the undertaking of any Remedial Actions pursuant to Environmental Laws.

4.11 **Brokers.** Seller has not employed any broker, finder or agent, with respect to the Acquisition or knows of any other basis on which any other third party could claim any broker’s, finder’s, agent’s or similar fee with respect thereto from Seller.

4.12 **Mineral Leases.**

(a) Exhibit A sets forth a true, correct and complete list of all Mineral Leases owned or leased by Seller. To Seller’s Knowledge, all of the Mineral Leases are in full force and effect as of the date of this Agreement. Buyer and Seller acknowledge that as of the date of this Agreement, Seller is in arrears in payments for royalties, overriding royalty interests and other payments due under the Mineral Leases and the estimated amounts of the royalty payments owed related to production through August 31, 2016 are set forth in Schedule 4.12(a)(i). Buyer and Seller acknowledge that as of the date of this Agreement, Seller is in arrears in payments for production from the Wells due under the Joint Operating Agreements or otherwise to working interest owners related to production and the estimated amounts of such payments through August 31, 2016 are set forth in Schedule 4.12(a)(ii).

(b) To Seller’s Knowledge, Seller has Defensible Title to the Mineral Leases, except as set forth in Section 4.12(a) and (c) herein.

(c) To Seller’s knowledge, all royalties, overriding royalty interests and other payments due under each of the Mineral Leases, Joint Operating Agreements and applicable Law have been timely and accurately paid, except (i) as set forth on Schedules 4.12(a)(i) and 4.12(a)(ii), (ii) as set forth on Schedules 4.12(c)(i) and 4.12(c)(ii) amounts that are being held in suspense as a result of returned mail, checks not negotiated, title issues, unlocatable mineral, royalty or working interest owners, or other required actions of the mineral or royalty owners in the ordinary course of business, in circumstances that do not provide any third party a right to terminate any such Mineral Lease and (iii) as set forth on Schedule 4.12(d), which contains a list

of the status of any payout balance (on a gross working interest basis for all working interest owners affected thereby), as of the last date referenced therein, for all Purchased Assets. The amount of Cure Costs for assumption and assignment of the Mineral Leases and the Joint Operating Agreements shall be calculated determined as of the petition date for Seller's Bankruptcy Case. The amount of the Cure Costs shall not be materially different than the estimated Cure Costs in Schedules 4.12(a)(i) and 4.12(a)(ii), plus the additional amounts accrued from the last date referenced in Schedules 4.12(a)(i) and 4.12(a)(ii) to the Petition Date. Schedules 4.12(c)(i) and 4.12(c)(ii) list the amounts due as of the last date referenced therein for amounts that are being held in suspense as a result of returned mail, checks not negotiated, title issues, unlocatable mineral, royalty or working interest owners, or other required actions of the mineral or royalty owners in the ordinary course of business (the "**Accrued Suspense Amounts**"). The amount of Accrued Suspense Amounts shall be determined as of the Closing Date. The amount of the Accrued Suspense Amounts shall not be materially different than the estimated Accrued Suspense Amounts in Schedules 4.12(c)(i) and 4.12(c)(ii), plus the additional amounts accrued from the last date referenced in Schedules 4.12(c)(i) and 4.12(c)(ii) to the Closing Date. Buyer and Seller acknowledge that they intend to pay prepetition royalties, overriding royalty interests and other payments due under each of the Mineral Leases, and working interest owner payments as listed on Schedules 4.12(a)(i) and 4.12(a)(ii) as Cure Costs at Closing.

4.13 **Wells.**

(a) Schedule 2.1(d) sets forth a true, correct and complete list of all Wells owned by Seller for use in connection with the Business as of the date of this Agreement. All Wells operated by Seller and, to the Knowledge of Seller, all Wells operated by third parties in which Seller has a working interest, have been drilled and completed at locations, and within the limits, permitted by Governmental Body, all applicable leases, contracts, and pooling, spacing or unit agreements; provided that the Wells identified on Schedule 2.1(d) as the BJNJ 19-18N-1H Well and the Aaberg 8-5N-1H Well were not completed and the leases associated with such Wells have been terminated. Schedule 2.1(d) indicates the Wells in which Seller is the operator of as of the date of this Agreement. There is no pending vote, or any outstanding request for a vote (whether written or oral), to have Seller removed as operator of any of the Wells, for which Seller is currently designated as the operator.

(b) No Well is subject to penalties on allowables due to overproduction prior to the date of this Agreement or any other violation of Law.

(c) There are no Wells that: (i) Seller is currently obligated by any applicable Law or Contract to currently plug, dismantle or abandon; or (ii) have been plugged, dismantle, or abandoned in a manner that does not comply in all respects with applicable Law or Contract.

4.14 **Sale Contracts.** Except as set forth on Schedule 2.1(c) and except for (a) contracts governing the sale of oil or gas in the ordinary course of business which are terminable by Seller without penalty on thirty (30) or fewer days' notice, or (b) the disposition in the ordinary course of business of equipment no longer suitable for or used in oil and gas field

operations, there are no Contracts or options to Seller as a party outstanding for the sale, exchange or transfer of any of Seller's interest in the Purchased Assets or any portion thereof.

4.15 **Preferential Purchase Rights.** To Seller's Knowledge, there are no Preferential Purchase Rights relating to any of the Purchased Assets.

ARTICLE V REPRESENTATIONS AND WARRANTIES OF BUYER

As a material inducement to Seller to enter into this Agreement and to consummate the transactions contemplated by this Agreement and the Ancillary Agreements, Buyer hereby represents and warrants to Seller that all of the statements contained in this Article V and made elsewhere in this Agreement by Buyer and all information delivered by Buyer in any schedule or exhibit hereto or thereto are true and correct on the date of this Agreement and shall be true and correct as of the Closing as though then made, except to the extent such representations and warranties are specifically made as of the particular date (in which case such representations and warranties will be true and correct as of such date).

5.1 **Organization and Good Standing.** Buyer is a limited liability company duly organized and in good standing under the laws of the State of Wyoming and has all requisite power and authority to carry on the Business as it has been and is now being conducted and to own, lease and operate its properties and to carry on its business as is now being conducted.

5.2 **Authority.** Buyer has the requisite power and authority to execute, deliver and perform this Agreement and each Ancillary Agreement to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and each Ancillary Agreement to which it is a party and the consummation of the transactions contemplated hereby and thereby by Buyer have been duly and validly authorized by all necessary company action on the part of Buyer and no other proceedings on the part of Buyer are necessary to authorize this Agreement and the Ancillary Agreements to which it is a party or to consummate the transactions contemplated hereby and thereby. This Agreement and the Ancillary Agreements to which it is a party have been duly and validly executed and delivered by Buyer and constitute the legal, valid and binding obligation of Buyer, enforceable against it in accordance with its terms.

5.3 **Validity of Contemplated Transactions; Consents and Approvals.** The execution and delivery by Buyer of this Agreement and the Ancillary Agreement to which it is a party and the consummation of the transactions contemplated hereby by Buyer will not (a) contravene or violate the articles of organization or operating agreement of Buyer or other applicable charter or organizational documents or any Regulation or Court Order that is applicable to Buyer, or (b) require Buyer to give notice to, make any filing with, or obtain any permit, authorization or approval from, any Governmental Authority, or (c) result in a Default under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, agreement lease or other instrument or obligation to which Buyer is a party or by which any of its assets may be bound, except for such Defaults as to which requisite waivers or consents have

been obtained or which would not, individually or in the aggregate, have a material adverse effect on the ability of Buyer to perform its obligations hereunder, or (d) violate any Regulation or Court Order that is applicable to Buyer.

5.4 **Litigation.** There are no Legal Proceedings pending or, to the knowledge of the Buyer, threatened against the Buyer, or to which the Buyer is otherwise a party before any Governmental Body, which, if adversely determined, would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Buyer is not subject to any Order, except to the extent the same would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

5.5 **Brokers.** Buyer has not employed any broker, finder or agent, with respect to the Acquisition or incurred any broker's, finder's, agent's or similar fee with respect thereto, which would affect the Purchase Price or Final Purchase Price or for which Seller or its Bankruptcy Estate will become liable.

5.6 **No Other Representations or Warranties.** Buyer acknowledges that Seller is not making any representations or warranties whatsoever, express or implied, beyond those expressly made by Seller in this Agreement, the Assignment and Assumption Agreement, and the other Ancillary Agreements, and each other agreement, document or instrument contemplated hereby or thereby.

ARTICLE VI BANKRUPTCY MATTERS

6.1 **Seller Bankruptcy Filing.** The Parties acknowledge and agree that Buyer is only willing and able to purchase the Purchased Assets if they can be conveyed free and clear of Liens. Seller has, based on failure of its efforts to negotiate a sale free and clear of Liens with its creditors, filed a petition under Chapter 11 of the Bankruptcy Code and seek Bankruptcy Court approval of sale of the Purchased Assets under Sections 363 and 365 and other applicable provisions of the Bankruptcy Code. This Agreement is entered into by the Parties with the knowledge and understanding that Seller intends to file a petition under the Bankruptcy Code. The Parties agree that this Agreement will be binding and enforceable following such bankruptcy filing by Seller, subject to approval of the Bankruptcy Court.

6.2 **Well Reworking.** Buyer and Seller agree that certain of the Wells require workovers in order to protect and preserve Seller's Mineral Leases and Wells and improve or increase Hydrocarbon production from such Wells. Seller's identification of necessary Well workovers and its estimate of Well Reworking Costs are set forth on Schedule 6.2. The operations associated with the Well Reworking Costs shall (a) be conducted pursuant to the terms set forth on Schedule 6.2, and shall (b) be financed through the debtor-in-possession financing agreement between Seller and Wells Fargo Energy Capital, Inc. ("**Wells Fargo**"), as provided under a budget to be approved by the Court Order of such financing ("**Budget**").

6.3 **Sale and Bidding Procedures.** Buyer and Seller acknowledge and agree that a sale of the Purchased Assets in bankruptcy, free and clear of Liens, will require a Bankruptcy Court approved competitive bidding process and Bankruptcy Court approval of bidding

procedures and a Sale Order. Buyer acknowledges that it may not be the high and successful bidder in such a process. Buyer and Seller acknowledge and agree to request the Bankruptcy Court to approve bidding procedures and requirements for the sale of the Purchased Assets substantially on the terms set forth on Exhibit H (“**Sale and Bidding Procedures**”).

ARTICLE VII COVENANTS OF PARTIES

7.1 Access and Information.

(a) From the date of this Agreement through the Closing Date, Seller shall, during ordinary business hours, upon reasonable prior notice: (i) give Buyer and Buyer’s officers, employees, consultants and Representatives (including, without limitation, its legal advisors and accountants), reasonable access to all officers, employees, books, records, plants, offices and other facilities and properties constituting the Purchased Assets to which Buyer is not denied access by law, (b) permit Buyer to make reasonable inspections thereof as Buyer may reasonably request, including, without limitation, performing any and all environmental inspections, (c) furnish Buyer with such financial and operating data and other information with respect to the Business as Buyer may from time to time reasonably request; and (d) otherwise reasonably facilitate and enable the completion by Buyer of its due diligence review relating to the Business, the Purchased Assets, the Assumed Liabilities and the Seller; provided, however that (i) any such access shall be conducted in such a manner as to not interfere unreasonably with the operation of the Business, (ii) Seller shall not be required to take any action which would constitute a waiver of the attorney-client privilege, and (iii) Seller need not supply Buyer with any information which Seller is under legal obligation not to supply.

(b) For a period of six months after the Closing Date, each Party shall have reasonable access to all of the books and records relating to the Purchased Assets, in the possession of the other Party to the extent that such access may reasonably be required by such Party in connection with the Assumed Liabilities or the Excluded Liabilities, or other matters relating to or affected by the operation of the Purchased Assets, including, without limitation, compliance with applicable Regulations. Such access shall be afforded by the Party in possession of such books and records upon receipt of reasonable advance notice during normal business hours.

The Party exercising such rights of access shall be solely responsible for any costs or expenses incurred by such Party pursuant to this Section 7.1.

7.2 Actions Pending the Closing. Seller covenants and agrees that, except (i) as expressly contemplated by this Agreement, (ii) with the prior written consent of Buyer, or (iii) as required by, arising out of, relating to or resulting from, the filing of the Bankruptcy Case or otherwise approved by the Bankruptcy Court from the date hereof until the Closing Date:

(a) Seller shall (1) conduct the Business only in the ordinary course, including continuing to pay all obligations when due after the bankruptcy filing date, and performing in all material respects all of its obligations under all Contracts and instruments relating to or affecting the Business or the Purchased Assets; (2) use good faith efforts to maintain good relations with

the customers of and vendors to the Business, and with the employees of the Business; (3) maintain its good standing in the jurisdiction of its organization; and (4) diligently conduct the operations associated with the Well Reworking Costs, pursuant to Schedule 6.2, in consultation with and to the reasonable satisfaction of Buyer, and Bankruptcy Court approval.

(b) Seller shall not take the following actions with respect to the Business, or the Purchased Assets: (1) allow for any Liens to be created with respect to the Purchased Assets or sell, lease, or otherwise allow for the disposition of any Purchased Assets (except in the ordinary course); (2) effect any increases in, or additions to, the compensation payable to any of the employees of Seller; (3) fail to maintain books, records and accounts of Seller; (4) agree to any material amendment to Contracts listed on Schedule 2.1(c); (5) change any of the accounting methods or procedures used by Seller unless required by GAAP or applicable Law; (6) bring, settle, compromise or waive any Litigation or legal right affecting the validity or value of any Purchased Assets; (7) amend, vary, terminate or waive any Mineral Lease or rights thereunder; (8) incur any new Indebtedness; or (9) authorize or enter into Contract to do any of the foregoing.

7.3 **Further Assurances.** From time to time after the date hereof and after the Closing Date, without further consideration, Seller will: (i) at its own expense, execute and deliver such documents to Buyer as Buyer may reasonably request in order to more effectively consummate the Acquisition or to more effectively vest in Buyer good and marketable title to the Purchased Assets; (ii) forward all mail relating to the Business or any of the Purchased Assets received from and after the Closing Date to Buyer; and (iii) forward to Buyer any payments received by Seller relating to the Purchased Assets which are due to Buyer.

7.4 **Public Statements.** Any initial press release concerning this Agreement and the transactions contemplated hereby shall be in a form agreed to by the parties. Prior to the Closing, none of the Parties hereto shall issue any press release concerning this Agreement or the transactions contemplated hereby without obtaining the prior written approval of the other Party hereto, which approval shall not be unreasonably withheld, denied, conditioned or delayed, unless such disclosure is otherwise required by applicable Law or by the Bankruptcy Court with respect to filings to be made with the Bankruptcy Court in connection with this Agreement.

7.5 **Notification of Certain Matters.** If following the date of this Agreement, Seller or Buyer has or gains Knowledge of any breach of the representations, warranties and covenants made by either of them in this Agreement, whether existing as of the date of this Agreement or thereafter, the non-breaching Party shall promptly disclose same or notify the other Party in writing.

7.6 **Casualty and Insurance.** Seller shall maintain until Closing all existing insurance policies relating to the Business or the Purchased Assets, at its sole cost and expense. If, between the date of this Agreement and the Closing, any of the Purchased Assets shall be damaged or destroyed by fire, theft, vandalism or other casualty event, or become subject to any condemnation or eminent domain proceeding, Seller shall promptly notify Buyer in writing of such fact and Buyer shall have the option to (i) acquire such Purchased Assets on an "as is" basis and take an assignment from Seller of any and all insurance proceeds payable to Seller, and any

and all third party claims of Seller, in respect of such event, (ii) elect to exclude such Purchased Asset from this Agreement, or (iii) in the event such event would have a Material Adverse Effect, terminate this Agreement and the transactions contemplated hereby.

7.7 **Confidentiality.** Buyer acknowledges and understands that this Agreement may be publicly filed in the Bankruptcy Court and further made available by Seller to prospective bidders and that, except as prohibited herein, such disclosure shall not be deemed to violate any confidentiality obligations owing to Buyer, whether pursuant to this Agreement or otherwise. Seller acknowledges and agrees that from and after the Closing, all non-public information relating to the Business, including the Purchased Assets and the Assumed Liabilities, shall be valuable and proprietary to Buyer and its Affiliates. Seller agrees that, from and after the Closing, Seller shall not disclose to any Person any information relating to Buyer and its Affiliates, or the Business, including the Purchased Assets and the Assumed Liabilities, except as required by Law or as otherwise becomes available in the public domain.

7.8 **Employee Matters.** Buyer shall have no obligation to employ any of Seller's employees and shall have no Liabilities with respect to any such employees, whether incurred prior to, as a result of or following the Closing, provided, however, that any such employees remaining employed by Seller on the Closing Date shall be available for hire by Buyer, as determined in its sole discretion and as agreed to by such employees.

7.9 **Cooperation.** The Parties shall cooperate with each other to cause the Business to be orderly transitioned from Seller to Buyer and to minimize the disruption to the Business resulting from the transactions contemplated hereby as reasonably requested by any Party, including facilitating the transition of key relationships of the Business to the Buyer.

7.10 **Successor Operator.** Seller shall use its commercially reasonable efforts to support FAC's efforts to be appointed or cause FAC's designee to be appointed the successor operator of each Well operated by Seller, to the extent permitted under any applicable joint operating agreement and to designate and/or appoint by assignment, to the extent legally possible and permitted under any such applicable joint operating agreement, FAC or FAC's designee as successor operator with respect to the Purchased Assets on or after the Closing Date.

7.11 **Sale "As Is – Where Is"/Title Defects.** Buyer acknowledges and represents that it has had a full and complete opportunity to conduct such investigations, due diligence, examinations, inspections and analyses of the Mineral Leases, Wells, Purchased Assets and other matters as Buyer, in its sole discretion, deems appropriate; and is not relying upon any statement, representations or warranties, except as set forth in this Agreement. Sale of the Mineral Leases, Wells and Purchased Assets shall be made on an "AS IS, WHERE IS" basis and without representations or warranties of any kind, nature or description by Seller except as and to the extent set forth in this Agreement. Buyer shall be entitled to conduct continuing due diligence on Seller's title to the Mineral Leases and Wells prior to Closing. If Buyer identifies any matters which, in Buyer's reasonable opinion, constitute Title Defects, Buyer may, in its sole discretion, notify Seller of the Purchased Assets affected by such Title Defects. Seller shall use reasonable efforts to address and cure such Title Defects prior to Closing. However, Buyer's identification or notification of any Title Defects shall not be grounds to terminate this Agreement.

7.12 **Environmental Defects.** Buyer acknowledges and represents that it has had a full and complete opportunity to conduct environmental due diligence on the Mineral Leases, Wells and related real and personal property interests. Buyer shall be entitled to conduct continuing environmental due diligence prior to Closing. If the Buyer identifies any event, circumstance or condition which, in its reasonable opinion, constitutes an Environmental Defect, the Buyer may, in its sole discretion, notify the Seller of the Purchased Assets (or portions thereof) affected by such Environmental Defect. Seller shall use reasonable efforts to address and cure such Environmental Defects prior to Closing. However, Buyer's identification or notification of any Environmental Defects shall not be grounds to terminate this Agreement.

7.13 **Suspense Accounts.** At the Closing, Buyer shall take assignment of any payable amounts and any receivable amounts associated with the Accrued Suspense Amounts in accordance with Section 2.3(d). Buyer agrees to indemnify, defend and hold Seller harmless from, and assume full responsibility for, the proper payment, administration and distribution of the Accrued Suspense Amounts.

7.14 **Seller's Records.** At or prior to Closing, Seller shall deliver Seller's Records to Buyer. If any of Seller's Records are stored electronically, Seller shall deliver such Seller's Records to Buyer in the format in which they are currently maintained; provided that, if requested by Buyer in writing, Seller shall use its commercially reasonable efforts to deliver such electronic records in such other format as may be reasonably requested by Buyer.

ARTICLE VIII CONDITIONS TO CLOSE

8.1 **Conditions to Obligations of Buyer.** The obligations of Buyer to effect the transactions contemplated by this Agreement and the Ancillary Agreements are further subject to the following conditions on or before the Closing (any of which may be waived thereby):

(a) The representations and warranties of Seller in Article IV must be true and correct in all material respects as of the Closing;

(b) All of the covenants and obligations that Seller is required to perform or comply with under this Agreement on or before the Closing must have been duly performed and complied with in all material respects;

(c) Buyer shall have received all consents, waivers or approvals required to be obtained from any Governmental Authority or any other Person necessary for the operation of the Business as it is currently conducted;

(d) The Bankruptcy Court shall have entered the Sale Order, and the Sale Order shall have become a Final Order;

(e) There must not be in effect any Law or Court Order that would prohibit or make illegal the consummation of the transactions contemplated by this Agreement or cause the transactions contemplated by this Agreement to be rescinded following consummation;

(f) No claim or assertion that Buyer should be liable for any portion or all of the Excluded Liabilities shall have been made by any Person;

(g) No Material Adverse Effect shall have occurred since the date of this Agreement and be continuing.

8.2 **Conditions to Obligations of Seller.** The obligations of Seller to effect the transactions contemplated by this Agreement and the Ancillary Agreements are further subject to the following conditions on or before the Closing (any of which may be waived thereby):

(a) The representations and warranties of Buyer in Article V must be true and correct in all material respects as of the Closing;

(b) All of the covenants and obligations that Buyer is required to perform or comply with under this Agreement on or before the Closing must have been duly performed and complied with in all material respects;

(c) The Bankruptcy Court shall have entered the Sale Order and such Sale Order shall not have been stayed as of the Closing Date;

(d) There must not be in effect any Law or Court Order that would prohibit or make illegal the consummation of the transactions contemplated by this Agreement or cause the transactions contemplated by this Agreement to be rescinded following consummation;

(e) No claim or assertion that Seller should be liable for any portion or all of the Assumed Liabilities shall have been made by any Person; and

(g) No Material Adverse Effect shall have occurred since the date of this Agreement and be continuing.

ARTICLE IX TERMINATION AND REMEDIES

9.1 **Termination of Agreement.** This Agreement may be terminated at any time prior to the Closing in accordance with any of the following provisions:

(a) by mutual written consent of Buyer and Seller;

(b) by Buyer (so long as Buyer is not then in material breach of any of its representations, warranties or covenants contained in this Agreement), if there has been a breach of any of Seller's representations, warranties or covenants contained in this Agreement, and such breach, if susceptible to cure, has not been cured by Seller within five Business Days of receipt of written notice thereof or waived by Buyer;

(c) by Seller (so long as Seller is not then in material breach of any of its representations warranties or covenants contained in this Agreement), if there has been a breach of any of Buyer's representations, warranties or covenants contained in this Agreement, and such breach, if susceptible to cure, has not been cured by Buyer within five Business Days of receipt of written notice thereof or waived by Seller;

(d) by Buyer and Seller, at any time that the Bankruptcy Court shall not have approved Sale and Bidding Procedures with respect to the Bankruptcy Case, including, without limitation, setting an auction date for the sale of the Purchased Assets by no later than November 22, 2016 (with a Sale Date no later than January 20, 2017);

(e) by Buyer or Seller, if the Bankruptcy Court refuses to enter the Sale Order or if a transaction relating to the Business or a material portion of the Purchased Assets with a third party that prohibits or prevents Buyer from consummating the transactions contemplated by this Agreement shall have closed;

(f) by Buyer or Seller if the Closing shall not have occurred on or prior to January 31, 2017;

(g) by Buyer, if material portion of the Purchased Assets have been damaged or destroyed before the Closing or if a condemnation or similar proceeding is instituted and maintained with respect to any of the Real Property before the Closing, provided, however, that if Buyer in its sole discretion elects to proceed with the Closing after receiving written notice from Seller of such damage or destruction or the institution of such proceedings, then Buyer shall be entitled to all insurance or condemnation proceeds, including, without limitation, business interruption and rental loss proceeds collected by Seller prior to the Closing Date, together with an amount equal to all deductible amounts under the insurance policies covering such damage or destruction; or

(h) by Buyer, at any time, if it reasonably determines in good faith that (i) Seller will be unable to deliver full title to the Purchased Assets at Closing free and clear of all Liens or (ii) the Sale Order is likely to contain any terms or conditions materially inconsistent with the terms, provisions, covenants or conditions of this Agreement.

9.2 **Procedure and Effect of Termination.** In the event of termination of this Agreement and abandonment of the transactions contemplated hereby by either or both of the Parties pursuant to Section 9.1, written notice thereof shall forthwith be given by the terminating Party to the other Party, and this Agreement shall terminate with each of the Parties being relieved of its duties and obligations hereunder and the transactions contemplated hereby shall be abandoned, without further action by any of the Parties hereto. If this Agreement is terminated by either or both of the Parties pursuant to Section 9.1, said termination shall be the sole remedy of the Parties hereto, except in the case of fraud or termination resulting from the willful breach by a Party of this Agreement, in which case the non-breaching Party shall have all rights and remedies existing under this Agreement, at law or in equity. In the event that this Agreement is terminated for any reason other than Section 9.1(c) or if otherwise provided under Article III of

Exhibit H, then Seller shall instruct Escrow Agent to return the Deposit to FAC within five (5) Business Days.

**ARTICLE X
MISCELLANEOUS**

10.1 **No Survival of Representations and Warranties.** The Parties hereto agree that the representations and warranties contained in this Agreement and the Ancillary Agreements shall not survive the Closing hereunder, and none of the Parties shall have any liability to each other after the Closing for any breach thereof. The parties hereto agree that the covenants contained in this Agreement and the Ancillary Agreements to be performed at or after the Closing shall survive the Closing hereunder until the expiration of the applicable statute of limitations or for such shorter period explicitly specified therein, and each Party hereto shall be liable to the other after the Closing for any breach thereof.

10.2 **Expenses.** Except as otherwise expressly provided in this Agreement, whether or not the transactions contemplated hereby are consummated, each of the Buyer, on one hand, and Seller on the other hand, shall pay all legal, accounting, and other fees and expenses it incurs in connection with the preparation of this Agreement and the consummation of the Acquisition; provided, however, that all sales, transfer and documentary Taxes, if any, due as a result of the transfer of the Purchased Assets to Buyer shall be paid by Buyer at Closing, and provided further that real and personal property Taxes relating to the Purchased Assets shall be prorated between Buyer and Seller as of the Closing Date.

10.3 **Submission to Jurisdiction; Consent to Service of Process.**

(a) Without limiting any Party's right to appeal any order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby, and (ii) any and all proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court for such purposes and shall receive notices at such locations as indicated in Section 10.6 hereof; provided, however, that if the Bankruptcy Case has been closed pursuant to section 350 of the Bankruptcy Code, the Parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the courts of the State of Montana and of the federal courts sitting in the State of Montana and any appellate court from any thereof, for the resolution of any such claim or dispute. The Parties hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the Parties hereto agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

(b) Each of the Parties hereto hereby consents to process being served by any Party to this Agreement in any Legal Proceeding by delivery of a copy thereof in accordance with the provisions of Section 10.6.

10.4 **Waiver of Right to Trial by Jury.** Each Party to this Agreement waives any right to trial by jury in any action, matter or proceeding regarding this Agreement or any provision hereof.

10.5 **Governing Law.** This Agreement shall be construed, performed and enforced in accordance with, and governed by, the Laws of the State of Montana (without giving effect to the principles of conflicts of Law thereof), except to the extent that the Laws of such State are superseded by the Bankruptcy Code or other applicable federal Law.

10.6 **Notices.** All notices and other communications under this Agreement shall be in writing and shall be deemed given (i) when delivered personally by hand, (ii) when sent by facsimile or email transmission (so long as confirmation of transmission is electronically or mechanically generated and kept on file by the sending party) or (iii) one (1) Business Day following the day sent by overnight courier (with written confirmation of receipt), in each case to the respective Persons at the following addresses, email addresses or facsimile numbers (or to such other address, e-mail address or facsimile number as a party may have specified by notice given to the other party pursuant to this provision):

If to Seller, to:

Seller: Mountain Divide, LLC
P.O. Box 190
Cut Bank, MT 59301

With a copy (which shall not constitute notice) to:

Jeffery A. Hunnes
Guthals, Hunnes & Reuss, P.C.
P.O. Box 1977
Billings, MT 59103
Email: jhunnes@ghrlawfirm.com

to Buyer, to:

Deep River: Deep River Operating, LLC
P.O. Box 68
Morrison, CO 80465

With a copy (which shall not constitute notice) to:

Steven D. Erdahl
2048 Overlook Drive
Fort Collins, CO 80526
Telephone: 303-324-7152
Email: steven.erdahl@gtrenewables.com

FAC: Future Acquisition Company, LLC
9990 Richmond Ave #202S,
Houston, TX 77042

Attention: Carl Price
Telephone: 832-831-3700
Email address: cprice@futureacq.com

With a copy (which shall not constitute notice) to:

Haynes and Boone, LLP
Buddy Clark
1211 McKinney, Suite 2100
Houston, Texas 77010
Telephone: 713 547 2077
Facsimile: (713) 236-5577
Email address: clarkb@haynesboone.com

10.7 **Severability**. Any provision of this Agreement that is invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

10.8 **Remedies Not Exclusive**. Nothing in this Agreement shall be deemed to limit or restrict in any manner any other rights or remedies that any Party may have against any other Party at law, in equity or otherwise.

10.9 **No Benefit to Others**. This Agreement is for the sole benefit of the Parties and their respective heirs, executors, legal representatives, estates, successors and permitted assigns, and shall not be construed as conferring any rights on any other Persons, including any employees of Seller.

10.10 **Entire Agreement; Amendments**. This Agreement and the Ancillary Agreements (including any schedules, exhibits and attachments hereto and thereto) set forth the entire agreement of the Parties with respect to the subject matter hereof. Any prior agreements or understandings between the Parties hereto regarding the subject matter hereof, whether written or oral, are superseded by this Agreement. Any item disclosed in a Schedule hereto in response to one Section of this Agreement shall not be deemed disclosed in response to any other Section hereof unless specifically provided otherwise herein. This Agreement may not be amended or modified except by a written instrument duly executed by each of the Parties hereto.

10.11 **Waiver**. Any term or provision of this Agreement may be waived at any time by the Party entitled to the benefit thereof by a written instrument duly executed by such Party. No such waiver shall limit the ability of the waiving party to enforce its remedies for a subsequent breach of such term or provision or for a breach of any other term or provision hereof. Neither

any failure nor any delay by any Party in exercising any right, power or privilege under this Agreement or the Ancillary Agreements will operate as a waiver of such right, power or privilege.

10.12 **Section Headings; Gender.** All section headings and the use of a particular gender are for convenience only and shall in no way modify or restrict any of the terms or provisions hereof. Any reference in this Agreement to a Section shall be deemed to be a reference to a Section of this Agreement unless the context expressly indicates otherwise.

10.13 **Interpretation.** As used in this Agreement, (a) references to the plural include the singular, the singular the plural, the part the whole, (b) references to any gender, including the neuter gender, shall include all genders, (c) "including" has the inclusive meaning frequently identified with the phrase "but not limited to" or "including, without limitation" and (d) references to "hereunder" or "herein" relate to this Agreement. Each accounting term used herein that is not specifically defined herein shall have the meaning given to it under GAAP.

10.14 **Counterparts.** This Agreement may be executed via facsimile, e-mail or other electronic means and in any number of counterparts, each of which shall be deemed an original, and all of which taken together shall constitute but one and the same instrument. This Agreement shall become binding only when each Party hereto has executed and delivered to the other Parties one or more counterparts.

10.15 **No Presumption.** The Parties to this Agreement agree that this Agreement was negotiated fairly between them at arm's length and that the final terms of this Agreement are the product of the Parties' negotiations. Each Party represents and warrants that it has sought and received legal counsel of its own choosing with regard to the contents of this Agreement and the rights and obligations affected hereby. The Parties agree that this Agreement shall be deemed to have been jointly and equally drafted by them, and that the provisions of this Agreement therefore should not be construed against a Party or Parties on the grounds that the Party or Parties drafted or was more responsible for drafting the provisions.


10.16 **Buyer's Representative.** Buyer appoints FAC as the representative to act on behalf of Buyer for certain limited purposes, as specified herein (the "Buyer Representative") in connection with the transactions contemplated by this Agreement, including executing and delivering documents, making elections and decisions to be made by the Buyer in connection with the Agreement, both prior to and following the Closing Date, and giving and receiving notices as permitted or required by the Agreement. Seller is entitled to rely on the actions of the Buyer Representative taken on behalf of Buyer in connection with the transactions contemplated by this Agreement. The Buyer Representative shall have such powers and authority as are necessary to carry out the functions assigned to it under this Agreement; provided, however, that the Buyer Representative shall have no obligation to act on behalf of Buyer, except as expressly provided herein.

10.17 **Access to Records.** Seller shall furnish to FAC, promptly upon the request of FAC, copies of all geological, engineering and related data contained in Seller's files or readily accessible to Seller relating to the Purchased Assets.

IN WITNESS WHEREOF, the parties have caused this Asset Purchase and Sale Agreement to be duly executed and delivered as of the date first set forth above.

SELLER

MOUNTAIN DIVIDE, LLC

By: 

Patrick M. Montalban, Manager

BUYER

DEEP RIVER OPERATING, LLC

By: 

Terry Vickery, Manager

BUYER

FUTURE AQUATION COMPANY, LLC

By: _____

Carl Price, Managing Member

IN WITNESS WHEREOF, the parties have caused this Asset Purchase and Sale Agreement to be duly executed and delivered as of the date first set forth above.

SELLER

MOUNTAIN DIVIDE, LLC

By: _____
Patrick M. Montalban, Manager

BUYER

DEEP RIVER OPERATING, LLC

By: _____
Terry Vickery, Manager

FUTURE ACQUISITION COMPANY,
LLC

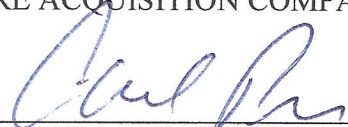
By:  _____
Carl Price, Managing Member

Exhibit F

ESCROW AGREEMENT

This Escrow Agreement is made effective this 3 day of November, 2016, by and between Mountain Divide, LLC of Cut Bank, Montana (“Seller”) and Future Acquisition Company, LLC (“FAC”).

A. FAC, Deep River Operating, LLC (“DRO”, collectively with FAC, “Buyers”) and Seller have entered into an Asset Purchase and Sale Agreement dated November 3, 2016 (“Agreement”) which provides for the sale of certain oil and gas assets by Seller to Buyers and for Buyers to act as a stalking horse bidder in a Bankruptcy Court auction sale process.

B. The Agreement provides for FAC to deliver the amount of \$300,000 as a Deposit for the Base Purchase Price upon execution of the Agreement to Guthals, Hunnes & Reuss, P.C. which will act as Escrow Agent for the Deposit.

NOW THEREFORE, in consideration of the mutual covenants contained in the Agreement and herein, FAC and Seller agree as follows:

1. Unless otherwise stated, the definitions provided for in the Agreement are adopted in this Escrow Agreement.
2. FAC hereby delivers to Guthals, Hunnes & Reuss, P.C. as Escrow Agent, the Deposit in the sum of \$300,000, which shall be held by Escrow Agent in a designated trust account.
3. Upon entry of a Bankruptcy Court Order that approves the acquisition of the Purchased Assets by FAC and DRO, Escrow Agent is hereby directed to deliver the Deposit to Seller, for application against the Purchase Price.
4. In the event DRO and FAC are not the Successful Bidders of the Purchased Assets, or if the Agreement is terminated other than under Section 9.1(c), the Deposit shall be returned to counsel for FAC, in full, 5 days after the Closing.
5. Buyers and Seller agree Escrow Agent shall incur no liability to Buyers or Seller in connection with this Escrow Agreement other than in connection with the holding and delivery of the Deposit by Escrow Agent. Buyers shall owe no fees or expenses to Guthals, Hunnes & Reuss, P.C., for its role as Escrow Agent.
6. This Agreement shall be subject to the terms and conditions of the Agreement, which are and shall be incorporated herein by reference, and any Bankruptcy Court Order.
7. None of the parties hereto may voluntarily or involuntarily assign its interest under this Agreement without the prior written consent of the other party, which will not be unreasonably withheld. Subject to the preceding sentence, this Agreement will apply to, be

Exhibit F

binding in all respects upon, and inure to the benefit of the successors and permitted assigns of the parties.

8. FAC and Seller agree to execute any reasonable supplemental escrow instructions requested by Escrow Agent.

IN WITNESS WHEREOF, FAC and Seller have executed this Escrow Agreement on November 3, 2016.

SELLER:



FAC:

ACCEPTANCE OF ESCROW

Guthals, Hunnes & Reuss, P.C., hereby accepts appointment as Escrow Agent pursuant to the terms and conditions of this Escrow Agreement.

Guthals, Hunnes & Reuss, P.C.


By 
Jeffery A. Hunnes
Its Authorized Officer

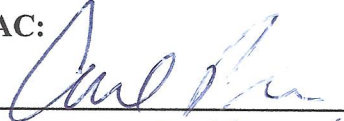
Exhibit F

binding in all respects upon, and inure to the benefit of the successors and permitted assigns of the parties.

8. FAC and Seller agree to execute any reasonable supplemental escrow instructions requested by Escrow Agent.

IN WITNESS WHEREOF, FAC and Seller have executed this Escrow Agreement on November 3, 2016.

SELLER:

FAC: 

Managing Member

ACCEPTANCE OF ESCROW

Guthals, Hunnes & Reuss, P.C., hereby accepts appointment as Escrow Agent pursuant to the terms and conditions of this Escrow Agreement.

Guthals, Hunnes & Reuss, P.C.

By _____
Jeffery A. Hunnes
Its Authorized Officer

Exhibit H

SALE and BIDDING PROCEDURES

This Exhibit H sets forth the proposed Sale and Bidding Procedures for the sale of the Purchased Assets under the Asset Purchase and Sale Agreement between Mountain Divide, Deep River and FAC (the “PSA”). Unless otherwise stated, the definitions provided for in the PSA are adopted in this Exhibit H.

Seller will request approval of these procedures as part of a Section 363 bidding procedures and sale motion or, if necessary per the Court, as part of a Chapter 11 Plan. The procedures will be subject to Bankruptcy Court approval and may need to be modified to address the Court’s requirements. Seller will consult with Buyer, Senior Lender and Committee (as defined below) on any changes in the procedures, but will be required to follow all requirements of the Bankruptcy Court. As part of the motion for approval of procedures, Seller will request the Court to approve Buyer as the “stalking horse” bidder (the “Stalking Horse Bidder”), a Break-Up Fee, and procedures for assumption and assignment of leases and executory contracts.

I. PROPOSED SALE AND BIDDING PROCEDURES

Seller and Buyer agree that the proposed Sale and Bidding Procedures will include the following provisions:

A. Stalking Horse Bidder. Buyer will be identified as the Stalking Horse Bidder with an opening bid of \$3,000,000.00 according to the terms of the PSA.

B. Break-Up Fee. FAC will be entitled to a Break-Up Fee of \$100,000.00 subject to Bankruptcy Court approval, which shall be remitted, if payable under the terms hereof, to FAC’s counsel, for distribution to FAC as provided under their Joint Bid Agreement, as may be amended, to reimburse FAC for its substantial time and incurred and paid expenses in working with Deep River and the Debtor through due diligence, providing the Deposit and, together with

Exhibit H

Deep River, being the Stalking Horse Bidder, which will provide a venue and opportunity for spirited bidding with other Qualified Bidders. Seller will request the Court approve, as part of these bid procedures, that the Break-Up Fee is an administrative expense of the estate. Should Buyer not be the successful Bidder (the "Successful Bidder"), the Break-Up Fee shall be escrowed and paid at Closing to FAC as provided herein.

C. Property to be Sold. The property to be sold will be the assets of the Seller identified as "Purchased Assets" in the PSA. The Parties acknowledge that certain contracts will be identified prior to the auction as to whether they will be included in the sale.

D. Sale Free and Clear of Liens, Claims, Interests and Encumbrances. All of Seller's right, title and interest in and to the property sold under the PSA will be transferred free and clear of all Liens in the property except for Permitted Liens and Assumed Liabilities. All Liens shall attach to the proceeds of the sale with respect to the particular assets sold in the same order, priority, dignity and effect that such Liens had immediately prior to such sale.

E. "As Is, Where Is". The proposed sale of assets of Seller will be on an "AS IS, WHERE IS" basis and without representations or warranties of any kind, nature or description by Seller except as set forth in the PSA. Each Bidder shall be deemed to acknowledge and represent that it has had a full and complete opportunity to conduct such investigations, examinations, inspections and analyses of the Purchased Assets as the Bidder, in its sole discretion, deems appropriate; and is not relying upon any statement, representations or warranties. The Assignment, Conveyance and Bill of Sale for the Purchased Assets shall be without warranty or representation by Seller.

F. The Sale Hearing. A hearing to approve the sale of the Purchased Assets to Buyer or other Successful Bidder ("Sale Hearing") will be held promptly following the Auction.

Exhibit H

Any party who has filed an objection, or higher offer, will be expected to be present at the Sale Hearing, failing which the objection will be overruled or the higher offer stricken. If no other Qualified Bids are timely submitted and no objections to the proposed sale are timely filed with the Court, the court may enter the Sale Order without holding a Sale Hearing. Closing of the sale of the Property is expressly conditioned upon entry of a final Order of the Court.

II. SALE PROCEDURES

A. Pre-Auction Sale Procedures.

1. Buyer is the Stalking Horse Bidder and is deemed a Qualified Bidder.
2. The asset sale will be subject to Sale Procedures as follows:
 - a. Any alternative bidder (each, an "Alternative Bidder" and its bid, an "Alternative Bid") interested in purchasing the Purchased Assets must submit a bid in writing to the Debtor with service on the following in conformity with the following procedures by no later than **12:00 p.m. Montana Time** on the eighth day before the Auction (the "Alternative Bid Deadline") in order to be considered a Qualified Bid:

Debtor's counsel, Jeffery A. Hunnes, Guthals, Hunnes & Reuss, 175 N. 27th Street, Ste. 903, Billings, Montana 59101. jhunnesh@ghrlawfirm.com

Deep River's counsel, Steven D. Erdahl, 2048 Overlook Drive, Fort Collins, Colorado 80526. Steven.erdahl@gtrenewables.com

FAC's counsel, Patrick L. Hughes, Haynes and Boone, LLP, 1221 McKinney, Suite 2100, Houston, Texas 77010. Patrick.hughes@haynesboone.com

Unsecured Creditors Committee counsel, Martin S. King, Worden, Thane, P.C., 111 North Higgins Ave., Suite 600, Missoula, Montana 59801. mking@wordenthane.com

- b. The contents of such Alternative Bid must:

Exhibit H

1. Identify the proponent of the Alternative Bid and an individual who is authorized to appear and act on behalf of the party submitting such Alternative Bid (the Alternative Bidder);
2. Be a firm, unconditional bid to purchase all or substantially all of the Purchased Assets, not subject to any contingencies as to the validity, effectiveness and/or binding nature of the offer, including, without limitation, the conduct of further due diligence review, obtaining financing or receipt of any consent from any third party;
3. Be an all cash bid of no less than \$3,200,000.00 and be accompanied by an irrevocable deposit delivered to the Attorney for the Debtor in the amount of \$300,000.00 (the "Good Faith Deposit") which will be placed into a non-interest bearing account under the terms of the Escrow Agreement until the 5th business day after the Order approving the sale of the Purchased Assets is entered, after which time the Good Faith Deposits of Bidders that were not selected as the Successful Bidder or the Back-Up Bidder shall be returned;
4. Be accompanied by sufficient information to demonstrate that the competing Bidder has the financial wherewithal to timely consummate the acquisition of the Purchased Assets, as provided further below to comprise a Qualified Bidder;
5. Be accompanied by a signed contract substantially in the form of the PSA; and marked to show any changes made to the form of the PSA;
6. Provide proof that full payment will be made in cash, of the Final Purchase Price per the Alternative Bid.

At least three Business Days prior to the Auction, Debtor will give all Qualified Bidders and all other persons entitled to attend the Auction a copy of the highest and best Qualified Alternative Bid received and copies of all other Qualified Alternative Bids. In addition, Debtor will inform each Qualified Bidder and each other person entitled to attend the Auction of the identity of all Qualified Bidders that may participate in the Auction.

c. Upon the receipt of a Bid, the Debtor will evaluate all bids to determine whether or not they are Qualified Bids and promptly inform and provide Buyer and any other Qualified Bidders of all Qualified Bids and any related information received.

Exhibit H

d. If no Qualified Bid is submitted for the Purchased Assets, then the Debtor will request at the Sale Hearing that the Bankruptcy Court approve the proposed sale to Buyer and enter the Sale Order; or may request entry of the Sale Order without hearing.

e. In order to attend and participate in the Auction, the Stalking Horse Bidder or an Alternative Bidder (a "Bidder"), must provide the following in order to be a Qualified Bidder:

1. A Qualified Bidder is a Bidder that (A) delivers the documents described above under the Pre-Auction Sale Procedures to the Debtor and Wells Fargo and representatives of the Committee (defined below) at least ten days before the Auction, and that (B) the Debtor, after consultation with Wells Fargo and the Committee, determines is reasonably likely to submit a *bona fide* offer and financially able to consummate a sale if selected as a Successful Bidder(s) at an auction (a "Qualified Bidder"). In the event a Notice of Disqualification is served by the Debtor eight days before the Auction, the Proposed Purchaser(s) will not be a Qualified Bidder(s) and will not be permitted to attend the Auction.

2. A Qualified Bidder must provide written evidence reasonably acceptable to the Debtor, including current financial statements and a description of cash, equity and debt financing sources to be used to close the transaction as set forth in the Bid, together with tender of a binding commitment letter or similar affirmation of credit from acceptable financing sources, that demonstrates that the Bidder(s) has the necessary financial ability to close to the contemplated transaction (including access to capital totaling at least the Purchase Price), and provide adequate assurance of future performance under all contracts to be assumed in such contemplated transaction. The Debtor may require additional financial information to demonstrate that a Bidder may perform its obligations under any Overbid. In the event any Bidder is comprised of two or more parties, this provision applies to each party with respect to their separate contribution to the Bid.

3. Upon the receipt from a Bidder of the information, documents and cash consideration required under Pre-Auction Sale Procedures, the Debtor, within two business days, shall determine and notify the Bidder with respect to whether such Bidder is a Qualified Bidder, and confirm such Bidder may participate at the Auction.

4. The Debtor shall consult with Wells Fargo and the Committee on whether a bid is a Qualified Bid.

Exhibit H

5. In the event any Bidder is comprised of two or more parties, and any one party (A) loses its right to bid, (B) fails to perform, or (C) does not meet the requirements of a Qualified Bidder, then, the remaining party or parties may step in the place of the disqualified party and assume (1) sole ownership of such disqualified party's rights under the PSA and (2) accept sole responsibility for the disqualified party's contribution (a "Step-In Bidder"). The Step-In Bidder must then requalify as a Qualified Bidder to demonstrate financial capability with regard to the newly assumed contribution within sufficient time to permit review by Debtor and conduct of the Auction on the proposed date.

B. Auction Procedures

1. If one or more Qualified Bids are submitted for the Purchased Assets the following Auction Process will take place:

a. Only Debtor, representatives of Secured Creditors, representatives of any Committee appointed by the Bankruptcy Court ("Committee"), and Qualified Bidders shall be entitled to attend the Auction, and only Qualified Bidders shall be entitled to make any additional bids at the Auction.

b. All Qualified Bidders shall be entitled to be present for all bidding with the understanding that the identity of each Qualified Bidder shall be fully disclosed to all persons present at the Auction and that all material terms of each bid will be fully disclosed to all persons present at the Auction

c. All Qualified Bidders shall be deemed to have consented to the core jurisdiction of the Court and to have waived any right to jury trial in connection with any disputes relating to the Auction and/or the sale of the Purchased Assets. All Qualified Bidders shall be bound by their bids until such time as a definitive sale agreement (acceptable to the Debtor in its sole discretion) is executed by the Successful Bidder and the Bankruptcy Court has entered an order approving the sale to such Successful Bidder.

Exhibit H

d. Prior to the start of the auction, Debtor may announce at the Auction additional procedural rules that it determines to be reasonable under the circumstances (e.g., the amount of the time allotted to make subsequent bids) for the conduct of the Auction, so long as such rules are not inconsistent with these Bidding Procedures. At the conclusion of the announcement of procedural formalities, the auction will proceed as follows:

1. The Debtor will conduct an "Open Cry Auction" (the "Auction") to consider the overbids for the Purchased Assets on _____ (or no later than _____) at U.S. Bankruptcy Court District of Montana, _____, _____, MT _____ beginning at _____ a.m. (Montana.)

2. Debtor shall evaluate all Qualified Bids received and shall determine which Qualified Bid reflects the highest and best offer as the Starting Bid, which shall be announced at the commencement of the Auction; and

3. At the Auction, bidding shall begin with the amount of the highest Qualified Alternative Bid (the "Opening Bid"), if any. The first incremental competitive bid at the Auction shall be at least One Hundred Thousand Dollars (\$100,000.00) over the Opening Bid; bidding shall thereafter continue in minimum increments of at least Fifty Thousand Dollars (\$50,000.00) higher than the previous bid. The order of bidding shall begin with the lowest Qualified Alternative Bid and shall continue in ascending order of each Qualified Alternative Bid, with Buyer being the last party to submit a subsequent bid in the initial round of bidding.

4. Buyer shall have the opportunity to increase its Bid by Fifty Thousand Dollars (\$50,000.00) in excess of the highest Qualified Alternative Bid to be eligible to become the starting bid, which increase will include Buyer's credit bid of One Hundred Thousand Dollars (\$100,000.00) for the Break-Up Fee against the purchase price, but any further increases by Buyer shall be in cash.

5. The Auction shall continue in one or more rounds of bidding and shall conclude after each participating Qualified Bidder has had the opportunity to submit an additional subsequent bid with full knowledge of the then-existing highest bid.

6. Any Qualified Bidder electing not to submit a subsequent bid when it is such party's turn to do so will be deemed to have "passed" its ability to bid in that round, but can continue to bid in later rounds.

Exhibit H

7. No secured creditor shall have the right to credit bid its secured claim against Debtor, provided that the final sales price is at the full amount of \$3,000,000 or greater.

8. Any disputes as to which the bid constitutes the winning bid shall be determined by the Bankruptcy Court.

e. If any overbid from an entity is accepted but fails to be consummated, the Debtor shall be obligated to consummate the transaction with the next highest Bidder. If Buyer's bid is the next highest bid, at Buyer's option, on or before the date that is two (2) Business Days after the date of such failure to consummate (but no later), Buyer may purchase on the terms of the PSA, except for the purchase price, which shall be equal to the purchase price of the next highest bid submitted by Buyer.

f. In the event that Debtor determines in good faith that it has not received a Qualified Bid by the Bid Deadline that is a higher and better bid, Debtor shall seek approval of the PSA at the Sale Hearing without conducting an Auction.

g. The Successful Bidder's deposit shall be applied by the Debtor against the Purchase Price to be paid; and, in the event any such Successful Bidder does not consummate the transaction by reason of its breach of terms of the purchase agreement such Person has entered into or agreed to enter into with the Debtor, such deposit shall be retained by the Debtor as liquidated damages. Any party that submits a deposit but otherwise fails to submit a Qualified Alternative Bid or that submits a deposit and is not the Successful Bidder for the Purchased Assets shall receive a refund of such deposit as soon as practicable after closing of the transaction with the Successful Bidder (or any backup Qualified Bidder).

h. If the Bankruptcy Court approves the sale of the Purchased Assets to a Qualified Bidder other than the Stalking Horse Bidder, the Debtor shall escrow or otherwise have available \$100,000.00 from the sale proceeds to pay the Stalking Horse Bidder the Break-

Exhibit H

Up Fee. On the first business day after the closing of the Alternative Transaction or when reasonably practicable, the Debtor shall pay by wire transfer to FAC's counsel the Break-Up Fee of \$100,000.00, for allocation to the Stalking Horse Bidder for reimbursement to them as they have separately agreed, which represents a reasonable estimate (and not penalty) of the expenses incurred by Buyer in performing its due diligence, negotiating the PSA and attempting to have the Bankruptcy Court approve the sale to Buyer and the benefit to the Debtor in the stalking horse bid. The Break-Up Fee shall be deemed an administrative claim until paid.

i. Upon the withdrawal of this Sale Motion by the Debtor, or the termination of the PSA by Buyer following the material breach of the PSA by the Debtor, the Break-Up Fee will be payable to the Stalking Horse Bidder, provided that (i) the Stalking Horse Bidder shall be entitled to seek and be granted specific performance of the PSA to enable it to purchase the Purchased Assets on the terms contained in the PSA, and (ii) in addition, if for any reason (notwithstanding the Stalking Horse Bidder's right to compel specific performance) the Debtor sells all or substantially all of its assets to another buyer, then the Break-Up Fee shall be payable to the Stalking Horse Bidder on consummation of such sale.

j. In the event that the Stalking Horse Bidder engages in a material breach of the PSA, the Stalking Horse Bidder will be deemed to have waived any entitlement to a Break-Up Fee.

k. In the event either of the identified Stalking Horse Bidder Buyers are the Successful Bidder, and one of them does not perform on its obligations, the other Buyer shall have sole entitlement to perform those obligations pursuant to Section II(A)(2)(e)(5) above and shall be the sole Buyer for all purposes and benefits under the PSA.

III. RETURN OF GOOD FAITH DEPOSIT

Exhibit H

Good Faith Deposits of the Successful Bidder(s) shall be applied to the purchase price of such transaction at Closing. Good Faith Deposits of all Backup Bidder(s) shall be held in a non-interest bearing escrow account until five (5) days after closing of the transactions contemplated by the Successful Bid, and thereafter returned, to the respective Backup Bidder(s)¹; Good Faith Deposits of all other Qualified Bidders (other than the Successful Bidder(s) and the Backup Bidder(s)) will be returned as soon as reasonably practicable after determination of the Backup Bidder(s). If a Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Debtor shall be entitled to retain the Good Faith Deposit as part of its damages resulting from the breach or failure to perform by the Successful Bidder.

IV. PROPOSED ASSUMPTION PROCEDURES

To facilitate and effectuate the Sale, and upon election by the Buyer to accept assignment of the Contracts, Debtor may seek authority to assume and assign certain Contracts including Joint Operating Agreements in accordance with the terms of the Agreement, in connection with the Sale in accordance with proposed Assumption Procedures to be included in Debtor's 363 motion.

V. CONDITIONS TO BUYER'S OBLIGATION TO CLOSE

Formal closing shall not occur until the Court has issued the Sale Order approving the applicable Asset Purchase Agreement and all of the terms and conditions thereof and authorizing the Debtor to consummate the transaction, and such Sale Order has either (i) become final and

¹ In the event the Stalking Horse Bidder is not the Successful Bidder, and is therefore a Backup Bidder, its Good Faith Deposit shall be returned to FAC as provided hereunder.

Exhibit H

not appealable, or (ii) the Sale Order contains a waiver of the stay set forth in Rules 6004(h) and 6006(d) of the Federal Rules of Bankruptcy Procedure and such order has not otherwise been stayed at the time of closing, or (iii) if not final or otherwise subject to stay, the Buyer elects to proceed to close the transaction.

VI. CLOSING DATE

A closing of the sale of Property shall take place on or before the tenth day following the satisfaction or waiver of all conditions to the obligations of the parties to consummate the sale transaction contemplated by the Agreement.

VII. JURISDICTION

The Court shall retain jurisdiction as to any matter related to the submission of bids, the sale of the Property, and any disputes under the PSA and Sale Order.

EXHIBIT 1 TO EXHIBIT B

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

In Re:)
) **Chapter 11**
MOUNTAIN DIVIDE, LLC,)
) **Case No. 16-61015-11**
Debtor.)

SALE AND BIDDING PROCEDURES

On _____, 2016, the United States Bankruptcy Court entered an Order (A) Approving Sale and Bidding Procedures; (B) Approving the Form and Manner of Notice; (C) Scheduling Auction and Sale Hearing; and (D) Authorizing Assumption and Assignment of Executory Contracts and Unexpired Leases (the “**Sale and Bidding Procedures Order**”) in which the Court approved the following procedures (the “**Sale and Bidding Procedures**”) setting forth the process for debtor (“**Mountain Divide**” or “**Debtor**”) as debtor in possession in this case to conduct a sale (“**Sale**”) of substantially all of its assets (the “**Purchased Assets**”), which are described in the Purchase and Sale Agreement between Mountain Divide as Seller and DRO and FAC as Buyer dated November 3, 2016 (“**PSA**”).

I. Sale and Bidding Procedures

A. Stalking Horse Bidder. Deep River Operating, LLC (“**DRO**”) and Future Acquisition Company, LLC (“**FAC**”) (collectively “**Buyer**”) will be identified as the (“**Stalking Horse Bidder**”) with an opening bid of \$3,000,000 according to the terms of the PSA.

B. Break-Up Fee. FAC will be entitled to a Break-Up Fee of \$100,000 subject to Bankruptcy Court approval, which shall be remitted, if payable under the terms hereof, to FAC’s counsel, for distribution to FAC as provided under their Joint Bid Agreement, as may be amended, to reimburse FAC for its substantial time and incurred and paid expenses in working with Deep River and the Debtor through due diligence, providing the Deposit and, together with Deep River, being the Stalking Horse Bidder, which will provide a venue and opportunity for spirited bidding with other Qualified Bidders. Seller will request the Court approve, as part of these bid procedures, that the Break-Up Fee is an administrative expense of the estate. Should Buyer not be the successful Bidder (the “**Successful Bidder**”), the Break-Up Fee shall be escrowed and paid at Closing to FAC as provided herein.

C. Property to be Sold. The property to be sold will be the assets of the Seller identified as “**Purchased Assets**” in the PSA. The Parties acknowledge that certain contracts will be identified prior to the Auction as to whether they will be included in the sale.

D. Sale Free and Clear of Liens, Claims, Interests and Encumbrances. All of Seller’s right, title and interest in and to the Purchased Asset sold under the PSA will be transferred

free and clear of all Liens in the property except for Permitted Liens and Assumed Liabilities. All Liens shall attach to the net proceeds of the sale which respect to the particular assets sold in the same order, priority, dignity and effect that such Lien had immediately prior to such sale.

E. Obtaining Due Diligence Access and Requests. Any person or entity interested in submitting a bid for the Purchased Assets must execute a confidentiality agreement in a form acceptable to Debtor and submit initial proof of financial wherewithal to consummate the acquisition of the Purchased Assets for the minimum cash bid of \$3,200,000. Any potential bidder that wishes to conduct due diligence on the Purchased Assets may be granted access to all material information that has been or will be provided to Buyer and other bidders. Seller maintains an online electronic data room and will provide access thereto to such persons or entities. The due diligence period for potential bidders will end one (1) business day before the Bid Deadline.

Debtor and its advisors shall coordinate all reasonable requests for additional information and due diligence access from potential bidders; provided, however, the Debtor may decline to provide such information to a potential bidder who, Debtor believes in its reasonable business judgment or subsequently determines does not intend in good faith to, or has the capacity to, consummate the purchase of the Purchased Assets.

Debtor designates Joseph Montalban to coordinate all reasonable requests for additional information and due diligence access. The contact information for Joseph Montalban is: P.O. Box 200, Cut Bank, MT 59427, phone: 1 (406) 873-2235, email: josephm@mountainviewenergy.com. Each potential bidder shall comply with all reasonable requests for additional information by Debtor regarding such potential bidder's financial wherewithal to consummate and perform obligations in connection with the sale. Failure by a potential bidder to comply with requests for additional information may be a basis for determination that a bid made by such bidder is not a Qualified Bid.

F. Marketing of Assets. Debtor will provide the confidentiality agreement and the Sale Notice to the persons or entities that have indicated interest in the Purchased Assets within the last year and to identified persons and entities in the oil and gas business in Montana, North Dakota, Wyoming and Colorado. Debtor will place advertisements or notices in several regional publications that target oil and gas activities.

G. "As Is, Where Is". The proposed sale of assets of Seller will be on an "AS IS, WHERE IS" basis and without representations or warranties of any kind, nature or description by Seller except as set forth in the PSA. Each Bidder shall be deemed to acknowledge and represent that it has had a full and complete opportunity to conduct such investigations, examinations, inspections and analyses of the Property as the Bidder, in its sole discretion, deems appropriate; and is not relying upon any statement, representations or warranties. The Assignment, Conveyance and Bill of Sale for the Purchased Assets shall be without warranty or representation by Seller.

H. The Sale Hearing. A hearing to approve the sale of the Purchased Assets to Buyer or other Successful Bidder ("**Sale Hearing**") will be held promptly following the Auction. Any party who has filed an objection, or higher offer, will be expected to be present at the Sale Hearing,

failing which the objection will be overruled or the higher offer stricken. If no other Qualified Bids are timely submitted and no objections to the proposed sale are timely filed with the Court, the court may enter the Sale Order without holding a Sale Hearing. Closing of the sale of the Property is expressly conditioned upon entry of a final Order of the Court.

I. Reservation of Rights. The procedures will be subject to Bankruptcy Court approval and may need to be modified to address the Court's requirements. Seller will consult with Buyer, Wells Fargo, and the Committee on any changes in the procedures, but will be required to follow all requirements of the Bankruptcy Court. If the procedures change in a material manner that is not reasonably acceptable to the Buyer, then FAC may in its discretion terminate its participation and role and will be refunded its deposit.

II. SALE PROCEDURES

A. Pre-Auction Sale Procedures.

1. Buyer is the Stalking Horse Bidder and is deemed a Qualified Bidder.
2. The asset sale will be subject to Sale Procedures as follows:

a. Any alternative bidder (each, an "**Alternative Bidder**" and its bid, an "**Alternative Bid**") interested in purchasing the Purchased Assets must submit a bid in writing to the Debtor with service on the following in conformity with the following procedures by no later than **12:00 p.m. Montana Time** on the eighth day before the Auction _____, 2017, (the "**Alternative Bid Deadline**") in order to be considered a Qualified Bid:

Debtor's counsel, Jeffery A. Hunnes, Guthals, Hunnes & Reuss, 175 N. 27th Street, Ste. 903, Billings, Montana 59101. jhunnnes@ghrlawfirm.com

Deep River's counsel, Steven D. Erdahl, 2048 Overlook Drive, Fort Collins, Colorado 80526. Steven.erdahl@gtrenewables.com

FAC's counsel, Patrick L. Hughes, Haynes and Boone, LLP, 1221 McKinney, Suite 2100, Houston, Texas 77010. Patrick.hughes@haynesboone.com

Unsecured Creditors Committee counsel, Martin S. King, Worden, Thane, P.C., 111 North Higgins Ave., Suite 600, Missoula, Montana 59801. mking@wordenthane.com

b. The contents of such Alternative Bid must:

1. Identify the proponent of the Alternative Bid and an individual who is authorized to appear and act on behalf of the party submitting such Alternative Bid (the Alternative Bidder);

2. Be a firm, unconditional bid to purchase all or substantially all of the Purchased Assets, not subject to any contingencies as to the validity,

effectiveness and/or binding nature of the offer, including, without limitation, the conduct of further due diligence review, obtaining financing or receipt of any consent from any third party;

3. Be an all cash bid of no less than \$3,200,000 and be accompanied by an irrevocable deposit delivered to the Attorney for the Debtor in the amount of \$300,000 (the “**Good Faith Deposit**”) which will be placed into a non-interest bearing account under the terms of the Escrow Agreement until the 5th business day after the Order approving the sale of the Property is entered, after which time the Good Faith Deposits of Bidders that were not selected as the Successful Bidder or the Back-Up Bidder shall be returned;

4. Be accompanied by sufficient information to demonstrate that the competing Bidder has the financial wherewithal to timely consummate the acquisition of the Purchased Assets, as provided further below to comprise a Qualified Bidder;

5. Be accompanied by a signed contract substantially in the form of the PSA; and marked to show any changes made to the form of the PSA;

6. Provide proof that full payment will be made in cash, of the Final Purchase Price per the Alternative Bid.

At least three Business Days prior to the Auction, Debtor will give all Qualified Bidders and all other persons entitled to attend the Auction a copy of the highest and best Qualified Alternative Bid received and copies of all other Qualified Alternative Bids. In addition, Debtor will inform each Qualified Bidder and each other person entitled to attend the Auction of the identity of all Qualified Bidders that may participate in the Auction.

c. Upon the receipt of a Bid, the Debtor will evaluate all bids to determine whether or not they are Qualified Bids and promptly inform and provide Buyer and any other Qualified Bidders of all Qualified Bids and any related information received.

d. If no Qualified Bid is submitted for the Purchased Assets, then the Debtor will request at the Sale Hearing that the Bankruptcy Court approve the proposed sale to Buyer and enter the Sale Order; or may request entry of the Sale Order without hearing.

e. In order to attend and participate in the Auction, the Stalking Horse Bidder or an Alternative Bidder (a “**Bidder**”), must provide the following in order to be a Qualified Bidder:

1. A Qualified Bidder is a Bidder that (A) delivers the documents described above under the Pre-Auction Sale Procedures to the Debtor, Wells Fargo and the Committee at least eight days before the Auction, and that (B) the Debtor, after consultation with Wells Fargo and the Committee, determines is reasonably likely to submit a *bona fide* offer and financially able to consummate a sale if selected as a Successful Bidder(s) at an auction (a “**Qualified Bidder**”). In the event a Notice of Disqualification is served by the Debtor six days before the

Auction, the Proposed Purchaser(s) will not be a Qualified Bidder(s) and will not be permitted to attend the Auction.

2. A Qualified Bidder must provide written evidence reasonably acceptable to the Debtor, including current financial statements and a description of cash, equity and debt financing sources to be used to close the transaction as set forth in the Bid, together with tender of a binding commitment letter or similar affirmation of credit from acceptable financing sources, that demonstrates that the Bidder(s) has the necessary financial ability to close to the contemplated transaction (including access to capital totaling at least the Purchase Price), and provide adequate assurance of future performance under all contracts to be assumed in such contemplated transaction. The Debtor may require additional financial information to demonstrate that a Bidder may perform its obligations under any Overbid. In the event any Bidder is comprised of two or more parties, this provision applies to each party with respect to their separate contribution to the Bid.

3. Upon the receipt from a Bidder of the information, documents and cash consideration required under Pre-Auction Sale Procedures, the Debtor, within two business days, shall determine and notify the Bidder with respect to whether such Bidder is a Qualified Bidder, and confirm such Bidder may participate at the Auction.

4. The Debtor shall consult with Wells Fargo and the Committee on whether a bid is a Qualified Bid.

5. In the event any Bidder is comprised of two or more parties, and any one party (A) loses its right to bid, (B) fails to perform, or (C) does not meet the requirements of a Qualified Bidder, then, the remaining party or parties may step in the place of the disqualified party and assume (1) sole ownership of such disqualified party's rights under the PSA and (2) accept sole responsibility for the disqualified party's contribution (a "**Step-In Bidder**"). The Step-In Bidder must then requalify as a Qualified Bidder to demonstrate financial capability with regard to the newly assumed contribution within sufficient time to permit review by Debtor and conduct of the Auction on the proposed date.

B. Auction Procedures

1. If one or more Qualified Bids are submitted for the Purchased Assets the following Auction Process will take place:

a. Only Debtor, representatives of secured creditors, representatives of any Committee appointed by the Bankruptcy Court ("**Committee**"), and Qualified Bidders shall be entitled to attend the Auction, and only Qualified Bidders shall be entitled to make any additional bids at the Auction.

b. All Qualified Bidders shall be entitled to be present for all bidding with the understanding that the identity of each Qualified Bidder shall be fully disclosed to all persons present at the Auction and that all material terms of each bid will be fully disclosed to all persons present at the Auction

c. All Qualified Bidders shall be deemed to have consented to the core jurisdiction of the Court and to have waived any right to jury trial in connection with any disputes relating to the Auction and/or the sale of the Purchased Assets. All Qualified Bidders shall be bound by their bids until such time as a definitive sale agreement (acceptable to the Debtor in its sole discretion) is executed by the Successful Bidder and the Bankruptcy Court has entered an order approving the sale to such Successful Bidder.

d. Prior to the start of the auction, Debtor may announce at the Auction additional procedural rules that it determines to be reasonable under the circumstances (e.g., the amount of the time allotted to make subsequent bids) for the conduct of the Auction, so long as such rules are not inconsistent with these Bidding Procedures. At the conclusion of the announcement of procedural formalities, the auction will proceed as follows:

1. The Debtor will conduct an "Open Cry Auction" (the "**Auction**") to consider the overbids for the Purchased Assets on _____ (or no later than _____) at U.S. Bankruptcy Court District of Montana, _____, MT _____ beginning at _____ a.m. (Montana.)

2. Debtor shall evaluate all Qualified Bids received and shall determine which Qualified Bid reflects the highest and best offer as the Starting Bid, which shall be announced at the commencement of the Auction; and

3. At the Auction, bidding shall begin with the amount of the highest Qualified Alternative Bid (the "**Opening Bid**"), if any. The first incremental competitive bid at the Auction shall be at least One Hundred Thousand Dollars (\$100,000) over the Opening Bid; bidding shall thereafter continue in minimum increments of at least Fifty Thousand Dollars (\$50,000) higher than the previous bid. The order of bidding shall begin with the lowest Qualified Alternative Bid and shall continue in ascending order of each Qualified Alternative Bid, with Buyer being the last party to submit a subsequent bid in the initial round of bidding.

4. Buyer shall have the opportunity to increase its Bid by Fifty Thousand Dollars (\$50,000) in excess of the highest Qualified Alternative Bid to be eligible to become the starting bid, which increase will include Buyer's credit bid of One Hundred Thousand Dollars (\$100,000) for the Break-Up Fee against the purchase price, but any further increases by Buyer shall be in cash.

5. The Auction shall continue in one or more rounds of bidding and shall conclude after each participating Qualified Bidder has had the opportunity to

submit an additional subsequent bid with full knowledge of the then-existing highest bid.

6. Any Qualified Bidder electing not to submit a subsequent bid when it is such party's turn to do so will be deemed to have "passed" its ability to bid in that round, but can continue to bid in later rounds.

7. No secured creditor shall have the right to credit bid its secured claim against Debtor, provided that the final sales price is at the full amount of \$3,000,000 or greater.

8. Any disputes as to which the bid constitutes the winning bid shall be determined by the Bankruptcy Court.

e. If any overbid from an entity is accepted but fails to be consummated, the Debtor shall be obligated to consummate the transaction with the next highest Bidder. If Buyer's bid is the next highest bid, at Buyer's option, on or before the date that is two (2) Business Days after the date of such failure to consummate (but no later), Buyer may purchase on the terms of the PSA, except for the purchase price, which shall be equal to the purchase price of the next highest bid submitted by Buyer.

f. In the event that Debtor determines in good faith that it has not received a Qualified Bid by the Bid Deadline that is a higher and better bid, Debtor shall seek approval of the PSA at the Sale Hearing without conducting an Auction.

g. The Successful Bidder's deposit shall be applied by the Debtor against the Purchase Price to be paid; and, in the event any such Successful Bidder does not consummate the transaction by reason of its breach of terms of the purchase agreement such Person has entered into or agreed to enter into with the Debtor, such deposit shall be retained by the Debtor as liquidated damages. Any party that submits a deposit but otherwise fails to submit a Qualified Alternative Bid or that submits a deposit and is not the Successful Bidder for the Purchased Assets shall receive a refund of such deposit as soon as practicable after closing of the transaction with the Successful Bidder (or any backup Qualified Bidder).

h. If the Bankruptcy Court approves the sale of the Purchased Assets to a Qualified Bidder other than the Stalking Horse Bidder, the Debtor shall escrow or otherwise have available \$100,000 from the sale proceeds to pay the Stalking Horse Bidder the Break-Up Fee. On the first business day after the closing of the Alternative Transaction or when reasonably practicable, the Debtor shall pay by wire transfer to FAC's counsel the Break-Up Fee of \$100,000, for allocation to the Stalking Horse Bidder for reimbursement to them as they have separately agreed, which represents a reasonable estimate (and not penalty) of the expenses incurred by Buyer in performing its due diligence, negotiating the PSA and attempting to have the Bankruptcy Court approve the sale to Buyer and the benefit to the Debtor in the stalking horse bid. The Break-Up Fee shall be deemed an administrative claim until paid.

i. Upon the withdrawal of this Sale Motion by the Debtor, or the termination of the PSA by Buyer following the material breach of the PSA by the Debtor, the Break-Up Fee will be payable to the Stalking Horse Bidder, provided that (i) the Stalking Horse Bidder shall be entitled to seek and be granted specific performance of the PSA to enable it to purchase the Purchased Assets on the terms contained in the PSA, and (ii) in addition, if for any reason (notwithstanding the Stalking Horse Bidder's right to compel specific performance) the Debtor sells all or substantially all of its assets to another buyer, then the Break-Up Fee shall be payable to the Stalking Horse Bidder on consummation of such sale.

j. In the event that the Stalking Horse Bidder engages in a material breach of the PSA, the Stalking Horse Bidder will be deemed to have waived any entitlement to a Break-Up Fee.

k. In the event either of the identified Stalking Horse Bidder Buyers are the Successful Bidder, and one of them does not perform on its obligations, the other Buyer shall have sole entitlement to perform those obligations pursuant to Section II(A)(2)(e)(5) above and shall be the sole Buyer for all purposes and benefits under the PSA.

III. RETURN OF GOOD FAITH DEPOSITS

Good Faith Deposits of the Successful Bidder(s) shall be applied to the purchase price of such transaction at Closing. Good Faith Deposits of all Backup Bidder(s) shall be held in a non-interest bearing escrow account until five (5) days after closing of the transactions contemplated by the Successful Bid, and thereafter returned, to the respective Backup Bidder(s)¹; Good Faith Deposits of all other Qualified Bidders (other than the Successful Bidder(s) and the Backup Bidder(s)) will be returned as soon as reasonably practicable after determination of the Backup Bidder(s). If a Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Debtor shall be entitled to retain the Good Faith Deposit as part of its damages resulting from the breach or failure to perform by the Successful Bidder.

IV. CONDITIONS TO BUYER'S OBLIGATION TO CLOSE

Formal closing shall not occur until the Court has issued the Sale Order approving the applicable Asset Purchase Agreement and all of the terms and conditions thereof and authorizing the Debtor to consummate the transaction, and such Sale Order has either (i) become final and not appealable, or (ii) the Sale Order contains a waiver of the stay set forth in Rules 6004(h) and 6006(d) of the Federal Rules of Bankruptcy Procedure and such order has not otherwise been stayed at the time of closing, or (iii) if not final or otherwise subject to stay, the Buyer elects to proceed to close the transaction.

¹ In the event the Stalking Horse Bidder is not the Successful Bidder, and is therefore a Backup Bidder, its Good Faith Deposit shall be returned to FAC as provided hereunder.

V. CLOSING DATE

A closing of the sale of Property shall take place on or before the tenth day following the satisfaction or waiver of all conditions to the obligations of the parties to consummate the sale transaction contemplated by the Agreement.

VI. JURISDICTION

The Court shall retain jurisdiction as to any matter related to the submission of bids, the sale of the Property, and any disputes under the PSA and Sale Order.