

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

	)	
In re:	)	Chapter 11
	)	
MURRAY ENERGY HOLDING CO., <i>et al.</i> , <sup>1</sup>	)	Case No. 19-56885 (JEH)
	)	
	)	Judge John E. Hoffman, Jr.
	)	
Debtors.	)	(Jointly Administered)
	)	

**DEBTORS’ MOTION FOR ENTRY OF AN ORDER  
(I) AUTHORIZING THE DEBTORS TO ENTER INTO AND PERFORM  
UNDER THE STALKING HORSE PURCHASE AGREEMENT, (II) APPROVING  
THE BIDDING PROCEDURES IN CONNECTION WITH THE SALE OF ALL  
OR SUBSTANTIALLY ALL OF THE DEBTORS’ ASSETS, (III) APPROVING THE  
PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY  
CONTRACTS AND UNEXPIRED LEASES, AND (IV) GRANTING RELATED RELIEF**

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The above-captioned debtors and debtors in possession (collectively, the “Debtors”) respectfully state as follows in support of this motion:

**Relief Requested**

1. The Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Bidding Procedures Order”), (a) approving and authorizing the Debtors to enter into and perform under an asset purchase agreement (the “Stalking Horse Purchase Agreement”) consistent with the term sheet attached as **Exhibit 1** to the Bidding Procedures Order (the “Term Sheet”), subject to higher and better offers submitted in accordance with the Bidding Procedures, (b) authorizing and approving the proposed bidding procedures attached as **Exhibit 2** to the

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<sup>1</sup> Due to the large number of Debtors in these chapter 11 cases, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. Such information may be obtained on the website of the Debtors’ claims and noticing agent at <https://cases.primeclerk.com/MurrayEnergy>. The location of Debtor Murray Energy Holdings Co.’s principal place of business and the Debtors’ service address in these chapter 11 cases is 46226 National Road, St. Clairsville, Ohio 43950.

Bidding Procedures Order (the “Bidding Procedures”), (c) establishing certain dates and deadlines for the sale process, including scheduling an auction (the “Auction”), if needed, and the hearing with respect to the approval of the sale (the “Sale Hearing”), (d) approving the manner of notice of the Auction, if any, and the Sale Hearing, attached as **Exhibit 3** to the Bidding Procedures Order (the “Sale Notice”), (e) approving procedures for the assumption and assignment of certain executory contracts and unexpired leases in connection with the sale and approving the form and manner of notice thereof, attached **Exhibit 4** to the Bidding Procedures Order (the “Contract Assumption Notice”), and (f) granting related relief. In support of approval of the Bidding Procedures, the sale process timeline, and the Stalking Horse Bid (as defined herein), the Debtors submit the declaration of John Startin, Senior Managing Director of Evercore Group L.L.C. (the “Startin Declaration”), which is attached hereto as **Exhibit B** and incorporated herein by reference.

### **Jurisdiction and Venue**

2. The United States Bankruptcy Court for the Southern District of Ohio (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *General Order 30-2* from the United States Bankruptcy Court for the Southern District of Ohio, dated October 10, 2019 (the “General Order”). The Debtors confirm their consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for the relief requested herein are sections 105, 363, 1123, 1125, 1126, and 1128 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), Bankruptcy Rules 2002, 3016, 3017, 3018, 3020, 6004, 9006, and 9007, Rules 6004-1 and 9013-1 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of Ohio (the “Local Rules”), and the General Order.

### **Introduction**

5. On October 29, 2019 (the “Petition Date”), the Debtors commenced these chapter 11 cases to run a competitive sale process for their assets, with an entity formed at the direction of their superpriority lenders acting as the stalking horse bidder for that process. Before the commencement of these cases, the Debtors, an ad hoc group of the Debtors’ superpriority term loan lenders (the “Ad Hoc Group”), and certain other parties entered into a restructuring support agreement (the “RSA”), which provided the backstop for \$350 million in new money debtor in possession financing to finance operations during these chapter 11 cases and set forth the framework for the going concern sale of substantially all of the Debtors’ assets through a chapter 11 plan (the “Plan”). The RSA has gathered significant support throughout the Debtors’ capital structure—lenders holding more than 83 percent of the Debtors’ superpriority term loans, noteholders holding more than 52 percent of the Debtors’ 1.5 lien notes, and noteholders more than 62 percent of the Debtors’ second lien notes have now signed onto the RSA.

6. Pursuant to RSA, the Ad Hoc Group agreed to direct the superpriority term loan agent to form an entity (the “Stalking Horse Bidder”) to provide an offer for the Debtors’ assets in the form of a credit bid. Since the Petition Date, the Debtors have engaged in good-faith, arm’s length negotiations with Ad Hoc Group on the terms of the stalking horse bid, which is embodied

in the Term Sheet (the “Stalking Horse Bid”). The Term Sheet provides, among other things, the Stalking Horse Bidder’s commitment to bid for the Debtors’ mining operations and other assets and for the sale to be consummated through the Debtors’ proposed chapter 11 plan. The Stalking Horse Bid will act as a floor for an overbid process to ensure that the Debtors receive the highest or otherwise best offer for their assets. Importantly, there is **no** break-up fee or expense reimbursement in connection with the Stalking Horse Bid. The terms of the Stalking Horse Bid will be further documented in a Stalking Horse Purchase Agreement, which the Debtors intend to reach agreement on with the Ad Hoc Group before the hearing on this motion, and will file that agreement with this Court once it is in agreed form.

7. The Debtors have already commenced marketing their assets, and already have reached out to 86 potential buyers and commenced negotiating non-disclosure agreements with potential interested purchasers. The Debtors now seek to formalize that marketing process. The proposed Bidding Procedures make clear that the Debtors will run a comprehensive marketing process and may accept offers for individual assets and for sub-groups of assets that are less than all of the Debtors’ assets. If the Debtors determine in their business judgment that such a bid or bids represent a higher or better offer, then the Debtors may pursue an alternative transaction.

8. The Debtors believe that the Bidding Procedures, entry into the Stalking Horse Purchase Agreement, and the related relief requested in this motion will allow the Debtors to efficiently accomplish a restructuring that is broadly supported by their capital structure and is in the best interests of the Debtors’ estates. Accordingly, the Debtors respectfully request that the Court grant the relief requested in this motion.

**The Proposed Sale and Bidding Procedures**

**I. Summary of Key Terms of the Stalking Horse Bid.**

9. The pertinent terms of the proposed Stalking Horse Bid are summarized in the following table.<sup>2</sup>

Term Sheet Provision	Summary Description
<b>Parties</b>	<u>Seller</u> : Murray Energy Holdings Co and each of its subsidiaries that hold Purchased Assets. <u>Purchaser</u> : Murray New Co
<b>Purchase Price</b>	The aggregate consideration for the Purchased Assets (as defined below) shall consist of the following (collectively, the “ <u>Purchase Price</u> ”): (i) assumption of the Assumed Liabilities (as defined below); (ii) a credit bid of certain debt owed by the Company to the Superpriority Lenders in an amount to be determined by the Requisite Consenting Superpriority Lenders as set forth in the definitive Purchase Agreement, pursuant to sections 363 and 1123 of the Bankruptcy Code; and (iii) such other consideration as determined by the Requisite Consenting Superpriority Lenders.
<b>Purchased Assets</b>	“ <u>Purchased Assets</u> ” <sup>3</sup> shall include the following assets and equity interests (and such other assets as Purchaser may determine to include prior to the Bid Deadline; provided, that should any assets listed as Excluded Assets at the time of execution of the definitive Purchase Agreement be added to the Purchased Assets prior to the Bid Deadline, then the Purchase Price shall be adjusted in an amount and manner acceptable to the Purchaser to account for the value of any such assets):  (i) all of the Company’s right, title and interest in and to the following assets and properties, in each case that are owned, held or used in or related to the Business (as defined below):  (1) the Assumed Contracts (as defined below);

<sup>2</sup> This summary is provided for the convenience of the Court and parties in interest. To the extent there is any conflict between this summary and the Term Sheet, the latter governs in all respects. Capitalized terms used but not otherwise defined in this summary shall have the meanings set forth in the Term Sheet.

<sup>3</sup> The entities that contain the Purchased Assets (other than the Acquired Equity Interests) include the following: (A) CCC Land Resources LLC, (B) CCC RCPC LLC, (C) Consolidation Coal Company, (D) the Eighty-Four Mining Company, (E) The Ohio Valley Coal Company, (F) The McElroy Coal Company, (G) UMCO Energy, Inc., (H) The American Coal Sales Company, (I) The Ohio Valley Transloading Company, (J) Murray American River Towing, Inc., (K) Murray American Transportation, Inc., (L) Ohio Energy Transportation, Inc., (M) Energy Transportation, Inc. (a subsidiary of Mill Creek Mining Company), (N) Anchor Longwall & Rebuild, Inc., (O) American Mine Services, Inc., (P) American Equipment & Machine, Inc., (Q) Murray Equipment & Machine, Inc., (R) West Virginia Resources, Inc. (a subsidiary of Mill Creek Mining Company), (S) Kanawha Transportation Center, Inc., (T) AMCA Coal Leasing, Inc., (U) West Ridge Resources, Inc., (V) Andalex Resources, Inc., (W) The American Coal Company, (X) Murray Kentucky Energy Services, Inc., (Y) OhioAmerican Energy, Inc., and (Z) Western Kentucky Resources, LLC.

Term Sheet Provision	Summary Description
	<p>(2) the infrastructure, equipment, machinery, furnishings, vehicles, aircraft, boats, vessels, rail cars, fixed assets and other tangible assets (including all mobile mining equipment, parts, supplies, tires and components) used in the Business (as defined below), in each case, to the extent that the underlying contract (if applicable) is an Assumed Contract;</p> <p>(3) all coal reserves, whether leased (to the extent the underlying lease is an Assumed Contract) or owned;</p> <p>(4) all coal inventory;</p> <p>(5) all gas inventory and reserves, whether leased (to the extent the underlying lease is an Assumed Contract) or owned;</p> <p>(6) the water treatment facilities and operating wells;</p> <p>(7) interests in and to leased or owned real property, including improvements, easements, mineral rights, mining rights, water rights, timber rights, subsidence rights and gas drilling rights; provided that in the case of leased real property such interests shall be Purchased Assets only to the extent the related lease is an Assumed Contract;</p> <p>(8) transferable or assignable permits;</p> <p>(9) intellectual property, software and technology;</p> <p>(10) expenses and deposits that have been prepaid by the Company and cash collateral securing letters of credit relating to the Business and issued on behalf of the Company;</p> <p>(11) accounts and other receivables;</p> <p>(12) all rights of the Sellers to use haul roads, utility easements and other rights of way and easements;</p> <p>(13) all insurance proceeds, reserves, benefits or claims of any Seller under the applicable insurance policies to the extent relating to the Assumed Liabilities, the Purchased Assets or the Business (collectively, the “<u>Insurance Proceeds and Claims</u>”);</p> <p>(14) all goodwill;</p> <p>(15) all demands, reimbursements and rights of whatever nature, to the extent related to the Purchased Assets or any Assumed Liability (as defined below), including rights under and pursuant to all warranties, representations, indemnities, licenses and guarantees made by suppliers of products, materials or equipment or components thereof, or arising from the breach by third parties of their obligations under the Assumed Contracts (as defined below);</p> <p>(16) all rights of Sellers (and their affiliates) under non-disclosure, or confidentiality, non-compete or non-solicitation agreements;</p> <p>(17) books and records, including tax returns and other tax records that relate</p>

Term Sheet Provision	Summary Description
	<p>primarily to the Business or Purchased Assets;</p> <p>(18) tax refunds, credits or other benefits with respect to or related to taxes attributable to (i) (x) the Purchased Assets for a post-closing tax period and (y) taxes that are Assumed Liabilities and (ii) the Purchased Assets to the extent such taxes are paid by Purchaser;</p> <p>(19) all of the Company’s rights to commence and pursue any and all claims and causes of action related to the Business, including any claims and causes of action arising under the sections 502(d), 544, 545, 547, 548, and 550 of the Bankruptcy Code, or any other avoidance action under the Bankruptcy Code or applicable non-bankruptcy law; and</p> <p>(20) all cash and cash equivalents of the Company other than the Adjusted Wind-Down Amount (as defined below);</p> <p>(ii) all of the equity interests held by the Company in (1) Foresight Energy GP LLC, (2) Foresight Energy LP, (3) Murray Metallurgical Coal Holdings, LLC, (4) Murray Colombian Resources, LLC, (5) Javelin Global Commodities Holdings LLP, and (6) Javelin Investment Holdings LLC (clauses (1) - (6) collectively, the “<u>Acquired Equity Interests</u>”);</p> <p>(iii) the assets that relate to the Company’s corporate overhead function, including with respect to the real property at the Company’s corporate headquarters and all tangible personal property and interests therein;</p> <p>(iv) all other assets of Sellers primarily related to the Business, except for assets that are specifically excluded in any of the foregoing clauses or specifically listed as an Excluded Asset;</p> <p>“<u>Business</u>” means the Company’s operations relating to:</p> <p>(1) the following mining complexes: (i) the Harrison County mine, (ii) the Marion County mine, (iii) the Marshall County mine, (iv) the Monongalia County mine, (v) the Century Mine, (vi) the Ohio County mine, (vii) the Lila Canyon mine, (viii) the Genesis mine, (ix) the Pride mine, (x) the Paradise mine, (xi) The Ohio Valley Coal Company Powhatan #6 Mine, (xii) Crandall Canyon Mine, (xiii) West Ridge Mine, (xiv) Tower Mine and (xv) all idled and closed mines, including (A) Lewis Creek Surface Mine, (B) Midway Surface Mine, (C) The American Coal Company - New Era Mine, (D) The American Coal Company - New Future Mine, (E) Equality Boot Surface Mine, (F) Paradise #9 Mine, (G) OhioAmerican Energy, Inc. - Salt Run Mine #1 and (H) South Crandall Canyon Mine.</p> <p>(2) the land and livestock business owned by Pleasant Farms, Inc.</p>
<p><b>Excluded Assets</b></p>	<p>The Purchased Assets shall not include the following, among other assets which Purchaser may determine to exclude prior to the Bid Deadline:</p> <p>(i) all assets of the Company that are not Purchased Assets,</p> <p>(ii) cash in an amount acceptable to the Requisite Consenting Superpriority Lenders and the Company (which amount shall be agreed no later than 14 days prior to the first day of the hearing to consider confirmation of the Plan) to fund (i) costs for the</p>

Term Sheet Provision	Summary Description
	<p>wind down of the Sellers’ estates (the “<u>Wind-Down Amount</u>”) and (ii) the amount of Funded Liabilities not assumed by Purchaser (as calculated in accordance with the “Funded Liabilities” section herein),</p> <p>(iii) minute books, stock ledgers and organizational documents of the Company,</p> <p>(iv) contracts and leases of the Sellers that are not Assumed Contracts,</p> <p>(v) equity securities of, or ownership in, the Sellers (for the avoidance of doubt, not including the Acquired Equity Interests),</p> <p>(vi) director and officer insurance policies and claims thereunder,</p> <p>(vii) all insurance policies of the Sellers, except for the Insurance Proceeds and Claims,</p> <p>(viii) all prepaid accounts and deposits to the extent unrelated to the Business,</p> <p>(ix) all rights to any refunds, credits, or other benefits with respect to or related to taxes, except as expressly listed in Item 18 of Purchased Assets,</p> <p>(x) tax returns and other tax records for each Seller and each subsidiary of each Seller (other than such tax returns and tax records (1) solely related to the Acquired Equity Interests or (2) primarily related to the Business or Purchased Assets), and</p> <p>(xi) the oil and gas business operated by American Natural Gas Inc. (collectively, the “<u>Excluded Assets</u>”).</p>
<p><b>Assumed Liabilities</b></p>	<p>“<u>Assumed Liabilities</u>” shall include only the following liabilities and obligations of the Sellers:</p> <p>(i) workers’ compensation liabilities relating to the current and former employees of Sellers or any predecessor of Sellers (“<u>Business Employees</u>”) who are hired by Purchaser (“<u>Purchaser Employees</u>”) to the extent such liabilities arise out of an event that first occurs after the closing date;</p> <p>(ii) any and all Black Lung liabilities of any Purchaser Employee to the extent first occurring on or after the lapse of the statutory period following the closing date for Purchaser to become a responsible operator to and with respect to such Employee of Purchaser under the Black Lung Benefits Act or under the Federal Coal Mine Health and Safety Act of 1969;</p> <p>(iii) to the extent required by law, all liabilities and obligations arising under environmental or mining safety laws or requirements, including any reclamation obligations, in respect of the ownership or operation of the Purchased Assets (excluding any fines or penalties arising from pre-closing violations);</p> <p>(iv) all liabilities arising under the Assumed Contracts to the extent arising after the closing date;</p> <p>(v) the Funded Liabilities (without duplication, and to the extent assumed by the Purchaser as set forth under “Funded Liabilities” below);</p> <p>(vi) all trade payables relating to the Business or the Purchased Assets and arising</p>

Term Sheet Provision	Summary Description
	<p>after the closing date;</p> <p>(vii) all liabilities for taxes (other than income taxes of Sellers) with respect to the Purchased Assets to the extent attributable to any post-closing tax period (as determined pursuant to a customary allocation);</p> <p>(viii) transfer taxes; and</p> <p>(ix) those liabilities to be mutually agreed and set forth on a schedule to the Purchase Agreement.</p>
<p><b>Excluded Liabilities</b></p>	<p>All pre-petition and post-petition liabilities of the Sellers, other than Assumed Liabilities, shall be “<u>Excluded Liabilities</u>”, including the following:</p> <p>(i) all liabilities (other than taxes) with respect to actions and proceedings pending before the closing or to the extent against or giving rise to liability against the Business or the Purchased Assets prior to the closing, even if instituted after the closing;</p> <p>(ii) all liabilities or other obligations with respect to Business Employees (or their representatives) (including any Purchaser Employees) based on any action or inaction occurring prior to the closing date, including payroll, vacation, sick leave, unemployment benefits, retirement benefits, pension benefits, employee stock options, equity compensation, employee stock purchases, profit sharing plans, health care and other welfare plans or benefits (including COBRA), or any other employee plans or arrangements or benefits or other compensation of any kind to any employee or former employee, and obligations of any kind including any liability pursuant to the WARN Act;</p> <p>(iii) any liability (whether arising before, on or after the closing date) with respect to any Business Employee who is not hired by Purchaser;</p> <p>(iv) except as expressly included in Assumed Liabilities, all Black Lung liabilities and workers’ compensation liabilities;</p> <p>(v) any liability or other obligations arising under, relating to or with respect to any employee benefit plan, policy, program, agreement or arrangement at any time maintained, sponsored or contributed by Sellers or any affiliate within the Sellers’ controlled group under the Employee Retirement Income Security Act of 1974 (“<u>ERISA Affiliate</u>”), or with respect to which Sellers or any ERISA Affiliate has any liability, including with respect to any retiree medical or other welfare plan or underfunded pension liability to any employee benefit plan, the Pension Benefit Guaranty Corporation, the Internal Revenue Service or Department of Labor or otherwise;</p> <p>(vi) any liability or other obligations arising under, relating to or with respect to any multi-employer pension plan</p> <p>(vii) any liability or other obligations under any employment arrangement, severance, retention or termination agreement or arrangement with any employee, consultant or contractor (or its representatives) of Sellers;</p> <p>(viii) any liability arising under any contract other than an Assumed Contract;</p>

Term Sheet Provision	Summary Description
	<p>(ix) any liability or other obligations under any existing CBA (as defined below) (except as determined under “Collective Bargaining Agreements” below);</p> <p>(x) any monetary fines or penalties imposed in connection with any violations of environmental law relating to the pre-closing period (including any fines or penalties with respect to the pending West Virginia Consent Decree to address Surface Mining Control and Reclamation Act and Clean Water Act matters at Marion County Mine, Harrison County Mine, Marshall County Mine, and Murray American Energy);</p> <p>(xi) the Funded Liabilities (to the extent not assumed by Purchaser as set forth under “Funded Liabilities” below); and</p> <p>(xii) all liabilities with respect to the Excluded Assets, including any environmental or reclamation liabilities arising with respect to the Excluded Assets, any properties formerly owned or operated by Sellers or with respect to the Business that are not Purchased Assets or pre-closing offsite waste disposal.</p>
<p><b>Closing Conditions</b></p>	<p>The Purchase Agreement will contain conditions to the obligation of Purchaser and the Company to consummate the Sale that are acceptable to the Requisite Consenting Superpriority Lenders and the Company, including the following:</p> <ul style="list-style-type: none"> <li>• Entry of a Confirmation Order in form and substance, including with respect to all findings of fact and conclusions of law, reasonably acceptable to the Company and Purchaser and such Confirmation Order not being subject to any stay or any appeal;</li> <li>• Each of the conditions to the effective date of the Plan of Reorganization shall have been satisfied or waived;</li> <li>• No injunctions or final order preventing the consummation of the Sale; and</li> <li>• The expiry or early termination of the waiting period under the HSR Act (if applicable) and the receipt of all other Regulatory Approvals set forth on a mutually agreed schedule to the Purchase Agreement.</li> </ul> <p>To the extent that any matters described in this term sheet require the agreement of Purchaser and Sellers, but such matters are not agreed at the time of signing a definitive Purchase Agreement, such matters will need to be mutually agreed as a condition to closing the transaction.</p> <p>The Purchase Agreement will contain conditions to the obligation of Purchaser to consummate the Sale that are acceptable to the Requisite Consenting Superpriority Lenders and the Company, including the following:</p> <ul style="list-style-type: none"> <li>• (x) The objection deadline shall have passed for all counterparties to Assumed Contracts to object to assignment and assumption by Purchaser, including with respect to the cure costs contained in the notices sent to such counterparties and set forth in the Purchase Agreement (provided that Purchaser shall not be obligated to assume any Assumed Contracts if the Cure Costs associated therewith are above the amounts agreed between Purchaser and Seller and such contracts will become rejected contracts under the Plan) and (y) all Assumed Contracts will have been assigned to, and assumed by, Purchaser or, to the extent required, will have been novated to Purchaser;</li> <li>• The Bankruptcy Court shall have determined and the Plan and Confirmation Order shall state that the Purchased Assets are being sold free and clear of all</li> </ul>

Term Sheet Provision	Summary Description
	<p>liabilities not expressly assumed by the Purchaser under the Purchase Agreement, including the successor clause in the CBAs, unless the parties to the CBAs agree to assume the successor clause in the CBAs, or the Bankruptcy Court grants a motion filed by the applicable Seller pursuant to 1113 of the Bankruptcy Code authorizing the applicable Seller to reject the CBAs;</p> <ul style="list-style-type: none"> <li>• Sellers’ fundamental representations and warranties in the Purchase Agreement will be true and correct in all aspects. All other representations and warranties of Sellers shall be true and correct in all respects (without giving any effect to any materially or material adverse effect qualifiers therein), except as would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the Purchased Assets or the Business;</li> <li>• The RSA shall not have been terminated with respect to any party thereto;</li> <li>• The Plan confirmed by the Confirmation Order, including the treatment of the Superpriority Lenders’ claims thereunder, shall be in substantially the same form and substance as set forth on an exhibit to the Purchase Agreement, as may be amended, modified or supplemented from time to time in accordance with the RSA;</li> <li>• Since the execution of the Purchase Agreement, no material adverse effect on the Purchased Assets or the Business shall have occurred;</li> <li>• No facts or circumstances exist that have caused or are reasonably expected to cause any of the Purchased Assets to be “permit blocked” by reason of listing on the Applicant Violator System;</li> <li>• Company’s compliance in all material respects with its covenants; and</li> <li>• The Wind-Down Amount, Adjusted Wind-Down Amount and the amount of the Funded Liabilities shall have been agreed in amounts acceptable to Purchaser.</li> </ul> <p>The Purchase Agreement will contain customary conditions to the obligations of the Company to consummate the Sale that are acceptable to the Requisite Consenting Superpriority Lenders and the Company, including the following (and other conditions to be mutually agreed in the Purchase Agreement):</p> <ul style="list-style-type: none"> <li>• Purchaser’s fundamental representations and warranties in the Purchase Agreement will be true and correct in all respects. All other representations and warranties of Purchaser shall be true and correct in all respects (without giving any effect to any materiality or material adverse effect qualifiers therein), except as would not, individually or in the aggregate, reasonably be expected to have a material and adverse effect on Purchaser’s ability to consummate the transactions contemplated by the Purchase Agreement;</li> <li>• Purchaser’s compliance in all material respects with its covenants;</li> <li>• Upon consummation of the Sale, the Sellers will have unrestricted cash in an amount sufficient to satisfy the Adjusted Wind-Down Amount;</li> <li>• Purchaser shall have the financial ability to comply with sections 365 and 1123 of the Bankruptcy Code, including providing adequate assurance of (x) future performance under all contracts to be assumed and (y) satisfaction of all Assumed Liabilities; and</li> </ul> <p>The Cure Costs shall have been paid (or otherwise reserved) in accordance with an order of the Bankruptcy Court.</p>

Term Sheet Provision	Summary Description
<b>Covenants</b>	Purchaser and Sellers will be subject to customary covenants, including, with respect to conduct of business prior to the closing, cooperation, access, notification, efforts to obtain Regulatory Approvals (as defined below) and to obtain the transfer of permits, the replacement of associated bonding and post-closing operation of the mines by Purchaser during the pendency of the permit transfers, and the satisfaction of applicable closing conditions.
<b>Termination</b>	<p>The Purchase Agreement will contain termination provisions acceptable to the Requisite Consenting Superpriority Lenders, including the following:</p> <p>(i) by mutual agreement of the Company and Purchaser;</p> <p>(ii) by written election of Purchaser:</p> <ol style="list-style-type: none"> <li>(1) upon a breach by Sellers of any representation, warranty, covenant or agreement in the Purchase Agreement or RSA, which breach would cause any of Purchaser’s conditions to the closing not to be satisfied; <u>provided</u> that Purchaser is not then in material breach and such breach has not been cured within fifteen (15) business days;</li> <li>(2) upon the Company entering into a definitive agreement with respect to a non de minimis portion of the Purchased Assets (pursuant to the Bidding Procedures Order);</li> <li>(3) upon the exercise of the lenders’ rights with respect to any Event of Default under the DIP Term Credit Agreement that is not waived or cured in accordance with the DIP Term Credit Agreement (as described in the DIP Term Credit Agreement);</li> <li>(4) upon the dismissal or conversion of any of the Chapter 11 Cases;</li> <li>(5) upon the appointment of a trustee or examiner with expanded powers; or</li> <li>(6) upon a termination of the RSA for a failure to meet Milestones.</li> </ol> <p>(iii) by written election of the Company</p> <ol style="list-style-type: none"> <li>(1) upon a breach by Purchaser of any representation, warranty, covenant or agreement in the Purchase Agreement or RSA, which breach would cause any of the Company’s conditions to the closing not to be satisfied; <u>provided</u> that the Company is not then in material breach and such breach has not been cured within fifteen (15) business days;</li> </ol> <p>(iv) by written election of either the Company or Purchaser:</p> <ol style="list-style-type: none"> <li>(1) if the closing does not occur on or prior to an agreed upon date, provided that the terminating party is not in breach of any representation, warranty, covenant or other agreement in the Purchase Agreement so as to cause the conditions to closing not to be satisfied;</li> <li>(2) if, at the end of the Auction (as such term shall be defined in the Bidding Procedures Order), Purchaser is not determined by Sellers in accordance with the Bidding Procedures Order to be the Successful Bidder (as such term shall be defined in the Bidding Procedures Order) or the Backup Best Bidder (as such term shall be defined in the Bidding Procedures Order), and, if Purchaser is the Backup Best Bidder, upon closing a sale transaction with the Successful Bidder;</li> <li>(3) if a court of competent jurisdiction or other governmental authority has issued an order or taken any other action permanently restraining, enjoining or otherwise prohibiting the consummation of the closing under</li> </ol>

Term Sheet Provision	Summary Description
	the Purchase Agreement and such order or action has become final and non-appealable; or  (4) upon permanent denial of any required regulatory approval, the receipt of which is a closing condition.

**II. The Bidding Procedures.**

10. The Bidding Procedures are intended to permit a fair and robust competitive sale process, consistent with the timeline of these chapter 11 cases, to confirm that the Stalking Horse Bid is, indeed, the best offer or identify the alternative bid that is higher or otherwise better. Because the Bidding Procedures are attached as **Exhibit 2** to the Bidding Procedures Order, they are not restated in their entirety herein. Generally speaking, however, the Bidding Procedures establish, among other things:<sup>4</sup>

- a. the requirements that potential bidders must satisfy to participate in the bidding process and become “Acceptable Bidders” (*see* Bid. Proc., at ¶ C);
- b. the availability of, access to, and conduct during due diligence by Acceptable Bidders (*see* Bid. Proc., at ¶ B);
- c. the deadlines and requirements for submitting competing bids and the method and criteria by which such competing bids are deemed to be “Qualified Bids” sufficient to trigger an Auction, including the minimum consideration that must be provided, the terms and conditions that must be satisfied, and the deadline that must be met by any Acceptable Bidder to be considered a “Qualified Bidder” (*see* Bid. Proc., at ¶¶ C, D);
- d. the manner in which Qualified Bids will be evaluated by the Debtors to determine the initial minimum overbid for the Auction (*see* Bid. Proc., at ¶ D);
- e. the conditions for having an Auction and procedures for conducting the Auction, if any (*see* Bid. Proc., at ¶¶ E, F, G);

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<sup>4</sup> This summary is provided for the convenience of the Court and parties in interest. To the extent there is any conflict between this summary and the Bidding Procedures, the Bidding Procedures govern in all respects. Capitalized terms used but not otherwise defined in this summary shall have the meanings set forth in the Bidding Procedures.

- f. the criteria by which the successful bidder or bidders will be selected by the Debtors (*see* Bid. Proc., at ¶¶ H); and
- g. various other matters relating to the sale process generally, including the designation of the back-up bid, the return of any good faith deposits to Qualified Bidders that submit Qualified Bids, and certain reservations of rights (*see* Bid. Proc., at ¶¶ I–O).

11. Importantly, the Bidding Procedures recognize the Debtors’ fiduciary obligations to maximize value, and, as such, do not impair the Debtors’ ability to consider all qualified bid proposals, and preserve the Debtors’ right to modify the Bidding Procedures as necessary or appropriate to maximize value for their estates. If the Debtors receive Bids for an individual asset or subgroup of the assets, the Bidding Procedures contemplate that the Debtors may conduct multiple Auctions. If the Debtors determine that pursuing a transaction or transactions resulting from a Sub-Auction would result in a higher or otherwise better value than a sale for the Assets on a consolidated basis, the Debtors may declare the winner of a Sub-Auction as a Successful Bidder. Furthermore, through the Bidding Procedures, the Debtors have agreed to provide substantial information about the ongoing sale process to their stakeholders to ensure that they are apprised of the status and determinations related to the sale.

### **III. The Proposed Sale Schedule.**

12. The Debtors’ milestones in their DIP financing facility require, among other things, (a) setting a final bid deadline by no later than 125 days after the Petition Date, or March 2, 2020, (b) conducting the Auction (if necessary) by no later than 135 days after the Petition Date, or March 12, 2020, (c) if done through a chapter 11 plan, confirmation of an order approving the sale by no later than 195 days after the Petition Date, or May 11, 2020, and (d) if done through a chapter 11 plan, closing of the sale by no later than 210 days after the Petition Date, or

May 26, 2020. Accordingly, the Debtors respectfully request that the Court approve the following proposed timeline for a sale process:

Action	Deadline
Preliminary Bid Deadline	January 21, 2020
Bid Deadline	March 2, 2020
Auction	March 12, 2020
Sale Objection Deadline	7 days prior to the Sale Hearing
Sale Hearing	Date approximately 190 days from the Petition Date, subject to court availability

13. The Debtors believe that this timeline will provide parties with sufficient time to obtain information necessary to formulate a competitive bid, maximizing the prospect of receiving an offer that would benefit the Debtors' estates and their stakeholders. In formulating the sale timeline, the Debtors balanced the need to provide adequate and appropriate notice to parties in interest and to potential purchasers with the need to quickly and efficiently sell their assets. By the time parties are required to submit their final bids, the assets will have been marketed for more than three months, giving parties sufficient time to conduct their due diligence with respect to the Assets. Accordingly, the Debtors believe the relief requested by this motion is in best interest of the Debtors' estates, will provide interested parties with sufficient opportunity to participate, and, therefore, should be approved.

**IV. Form and Manner of Sale Notice.**

14. As soon as reasonably practicable after entry of the Bidding Procedures Order, the Debtors will serve the Sale Notice, the Bidding Procedures Order, and the Bidding Procedures upon the following parties or their respective counsel, if known (collectively, the "Notice Parties"): (a) the UCC; (b) the U.S. Trustee for the Southern District of Ohio; (c) the indenture trustees under

the Debtors' prepetition indentures; (d) the administrative agents under the Debtors' prepetition term loan facilities; (e) the administrative agent under the Debtors' debtor-in-possession financing facility; (f) counsel to the Ad Hoc Group; (g) the United States Attorney's Office for the Southern District of Ohio; (h) the Internal Revenue Service; (i) the Environmental Protection Agency and similar state environmental agencies for states in which the Debtors operate; (j) the attorneys general for the states in which the Debtors operate; (k) the Pension Benefit Guaranty Corporation; (l) the United Mine Workers of America ("UMWA"); (m) the Seafarers International Union; (n) the UMWA 1974 Pension Plan and Trust, UMWA 1992 Benefit Plan, UMWA 1993 Benefit Plan, and UMWA 1988 Cash Deferred Savings Plan; (o) any parties known or reasonably believed to have expressed an interest in the Debtors' assets; (p) all entities known or reasonably believed to have asserted a lien, encumbrance, claim, or other interest in any of the Debtors' assets; and (q) any party that has requested notice pursuant to Bankruptcy Rule 2002.

15. Additionally, as soon as practicable after entry of the Bidding Procedures Order, the Debtors shall publish a notice, substantially in the form of the Sale Notice, on one occasion, in *The Wall Street Journal*, the *New York Times*, *The Birmingham News*, *The Columbus Dispatch*, the *Herald Dispatch*, *The Lexington Herald Leader*, the *Courier Journal*, and the *Salt Lake Tribune*. This publication notice will provide notice of the sale to any other interested parties whose identities are unknown to the Debtors.

16. The Debtors submit that the Sale Notice is reasonably calculated to provide all interested parties with timely and proper notice of the proposed sale, including: (a) the date, time, and place of the Auction (if one is held); (b) the Bidding Procedures and the dates and deadlines related thereto; (c) the dates and deadlines related to the Sale Hearing; and (d) instructions for promptly obtaining a copy of the Stalking Horse Purchase Agreement (once finalized).

Accordingly, the Debtors request that the form and manner of the Sale Notice be approved and that the Court determine that no other or further notice of the Auction or Sale Hearing is required.

**V. Assumption Procedures.**

17. The Debtors are also seeking approval of procedures for the assumption and assignment of certain executory contracts and unexpired leases in connection with the sale (the “Assumption Procedures”) to facilitate the fair and orderly assumption and assignment of certain executory contracts in connection with the sale. Because the Assumption Procedures are set forth in detail in the attached Bidding Procedures Order, they are not restated herein.<sup>5</sup> Generally speaking, however, the Assumption Procedures (a) outline the process by which the Debtors will serve notice to all counterparties to executory contracts and unexpired leases (the “Assigned Contracts”) regarding the proposed assumption and assignment and related cure amounts, if any, informing such parties of their rights and the procedures to object thereto, and (b) establish objection and other relevant deadlines and the manner for resolving disputes relating to assumption and assignment of certain Assigned Contracts to the extent necessary.

**Basis for Relief**

**I. The Relief Sought in the Bidding Procedures Order Is in the Best Interests of the Debtors’ Estates and Should Be Approved.**

18. Section 363(b) of the Bankruptcy Code provides that “[t]he [debtor in possession], after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate . . . .” 11 U.S.C. § 363(b)(1). The Sixth Circuit has made clear that a court may approve a sale of assets where the transaction is supported by a sound business purpose. *See,*

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<sup>5</sup> The proposed Assumption Procedures set forth in the Bidding Procedures Order relate specifically to the proposed mechanism for providing notice of cure amounts to certain executory contract counterparties, entertaining objections thereto, and resolving disputes related thereto.

*e.g., Stephens Indus., Inc. v. McClung*, 789 F.2d 386, 389 (6th Cir. 1986) (citing *In re Lionel Corp.*, 722 F.2d 1063, 107 (2d Cir. 1983)). To demonstrate sound business purpose warranting a sale, courts within the Sixth Circuit have applied a four-part test to requiring a debtor to demonstrate (a) a sound business reason for the sale, (b) good faith, (c) an adequate sale price, and (d) accurate and reasonable notice of the sale. *In re Nicole Energy Services, Inc.*, 385 B.R. 201, 231 (Bankr. S.D. Ohio 2008) (quoting *In re County Manor of Kenton, Inc.*, 172 B.R. 217, 220 (Bankr. N.D. Ohio 1994)).

19. Bidding procedures, such as those proposed here, may be used in court-supervised asset sales because they streamline the acquisition process, “help to provide an adequate basis by which to compare offers,” and maximize value. John J. Jerome & Robert D. Drain, Bankruptcy Court Is Newest Arena for M&A Action, N.Y.L.J., June 3, 1991. To that end, courts uniformly recognize that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate and therefore are appropriate in the context of bankruptcy transactions. *See Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 659 (S.D.N.Y. 1992) (bidding procedures “are important tools to encourage bidding and to maximize the value of the debtor’s assets”); *see also In re Fin. News Network, Inc.*, 126 B.R. 152, 156 (Bankr. S.D.N.Y. 1991) (“[C]ourt-imposed rules for the disposition of assets . . . [should] provide an adequate basis for comparison of offers, and [should] provide for a fair and efficient resolution of bankrupt estates.”); *see also In re AmTrust Fin. Corp.*, No. 09-21323 (PEM) 2010 WL 4917557, at \*1 (Bankr. N.D. Ohio Sept. 22, 2010) (finding that bidding procedures were designed to maximize return to the seller’s estate); *In re Sigma Oh Indus., Inc.*, No. 09-44525 (KW) 2010 WL 4917604, at \*1 (Bankr. N.D. Ohio Feb. 8, 2010) (finding that proposed bidding procedures “will facilitate orderly marketing and bidding for

the assets and will thereby maximize the value of the assets and recoveries to the Debtors' creditors").

20. The Debtors have carefully evaluated a number of qualitative and quantitative factors in designing a process that they believe will maximize the value of their estates, produce maximum recoveries, and result in a successful restructuring of their estates. This process includes both the Stalking Horse Purchase Agreement and the Bidding Procedures, which are designed to promote active bidding from seriously interested parties and to elicit the highest or otherwise best offers available for the Debtors' assets. The Debtors are confident that the Bidding Procedures will allow the Debtors to solicit additional offers and conduct their sale process in a controlled, fair, and open fashion that will encourage participation by financially capable bidders who will offer the best package for the assets and who can demonstrate the ability take on the assets, obligations, and liabilities being transferred. In particular, the Bidding Procedures contemplate an open auction process with minimum barriers to entry and provide potential bidding parties with sufficient time to perform due diligence and acquire the information necessary to submit a timely and well-informed bid.

21. The Debtors submit that the Bidding Procedures will encourage competitive bidding, are appropriate under the relevant standards governing auction proceedings and bidding incentives in bankruptcy proceedings, and are consistent with other procedures previously approved by this district and in other jurisdictions. *See, e.g., In re AcuSport Corp.*, No. 18-52736 (JEH) (Bankr. S.D. Ohio May 16, 2018) (approving entry into stalking horse purchase agreement and other bidding procedures relief); *In re FirstEnergy Solutions Corp.*, No. 18-50757 (AMK) (Bankr. N.D. Ohio Dec. 19, 2018) (similar); *In re Mission Coal Co., LLC*, No. 18-04177 (TOM)

(Bankr. N.D. Ala. Dec. 12, 2018) (similar); *In re Westmoreland Coal Co.*, No 18-35672 (DRJ) (Bankr. S.D. Tex. Oct. 18, 2018) (similar).<sup>6</sup>

22. The Debtors respectfully submit that the Stalking Horse Purchase Agreement and the Bidding Procedures will encourage robust bidding for the assets and are appropriate under, and consistent with, the relevant standards governing overbid processes in bankruptcy proceedings. Accordingly, the Debtors respectfully submit that the Stalking Horse Purchase Agreement and the Bidding Procedures should be approved.

## **II. The Form and Manner of Notice Should Be Approved.**

23. Pursuant to Bankruptcy Rule 2002(a), the Debtors are required to provide creditors with 21 days' notice of an auction. Pursuant to Bankruptcy Rule 2002(c), such notice must include the time and place of the proposed auction and the deadline for filing any objections to such a sale.

24. As soon as reasonably practicable following entry of the Bidding Procedures Order, the Debtors will cause the Sale Notice, the Bidding Procedures Order, and the Bidding Procedures to be served upon the Notice Parties.

25. The Debtors submit that the Sale Notice constitutes good and adequate notice of the Auction and the proceedings with respect thereto in compliance with, and satisfaction of, the applicable requirements of Bankruptcy Rule 2002 and Local Rule 6004-1. Accordingly, no further notice is necessary and the Debtors request that this Court approve the form and manner of the notice of the Sale Notice.

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<sup>6</sup> Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request of the Debtors' proposed counsel.

**III. The Assumption and Assignment of Executory Contracts and Unexpired Leases Should Be Approved.**

**A. The Assumption Procedures Are Appropriate and Should be Approved.**

26. In connection with the assumption and assignment of certain Assigned Contracts, the Debtors believe it is necessary to establish a process by which (a) the Debtors and counterparties to Assigned Contracts can reconcile cure obligations, if any, in accordance with section 365 of the Bankruptcy Code and (b) such counterparties can object to the assumption and assignment of the Assigned Contracts and/or related cure amounts.

27. As set forth in the Bidding Procedures Order, the Debtors also request that any party that fails to object to the proposed assumption and assignment of any Assigned Contract be deemed to consent to (a) the assumption and assignment of the applicable Assigned Contract pursuant to section 365 of the Bankruptcy Code and (b) assignment notwithstanding any anti-alienation provision or other restriction on assignment. *See, e.g., Hargrave v. Township of Pemberton (In re Tabone, Inc.)*, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (by not objecting to sale motion, creditor deemed to consent); *Pelican Homestead v. Wooten (In re Gabel)*, 61 B.R. 661, 667 (Bankr. W.D. La. 1985) (same).

28. The Debtors believe that the Assumption Procedures are fair and reasonable, provide sufficient notice to parties to the executory contracts, and provide certainty to all parties in interest regarding their obligations and rights in respect thereof. Accordingly, the Debtors request the Court approve the Assumption Procedures set forth in the Bidding Procedures Order.

**B. The Assumption and Assignment of the Assigned Contracts Reflects the Debtors' Reasonable Business Judgment.**

29. The Debtors also must demonstrate that the assumption of the executory contracts in connection with the sale reflects sound business judgment. *See Matter of Federated Dep't*

*Stores, Inc.*, 131 B.R. 808, 811 (S.D. Ohio 1991) (“Courts traditionally have applied the business judgment standard in determining whether to authorize the rejection of executory contracts and unexpired leases.”); *In re Greektown Holdings, L.L.C.*, 51 Bankr. Ct. Dec. 173, \*3 (Bankr. E.D. Mich. 2009) (“Courts initially apply a ‘business judgment’ and ‘benefit to the estate’ test under §365(a) to determine whether or not a debtor should be allowed to assume an executory contract.”). A motion to assume an executory contract is considered a summary proceeding, whereby courts efficiently review a “debtor’s decision to adhere to a particular contract in the course of the swift administration of the bankruptcy estate.” *See Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1099. In conducting such review, bankruptcy courts should “examine a contract and the surrounding circumstances and apply its best ‘business judgment’ to determine if it would be beneficial or burdensome to the estate to assume it.” *Id.* (the court “sits as an overseer of the wisdom with which the bankruptcy estate’s property is being managed”).

30. In other words, the Court must place itself in the position of the debtors and determine “whether assuming the contract would be a good business decision or a bad one.” *In re Penn Traffic Co.*, 524 F.3d 373, 383 (2d Cir. 2008); *see also Orion Pictures*, 4 F.3d at 1099. If a debtor’s business judgment has been exercised reasonably, the court should approve the assumption of an executory contract. *Allied Tech., Inc. v. R.B. Brunemann & Sons, Inc.*, 25 B.R. 484, 495 (Bankr. S.D. Ohio 1982) (“As long as assumption of a lease appears to enhance a debtor’s estate, Court approval of a debtor in possession’s decision to assume the lease should only be withheld if the debtor’s judgment is clearly erroneous, too speculative, or contrary to the provisions of the Bankruptcy Code, and particularly of 11 U.S.C. § 365.”).

31. Here, a review of relevant facts demonstrates that the Court should approve the decision to assume and assign the executory contracts in connection with the sale as a sound exercise of the Debtors' business judgment, consistent with the well-settled standard in this district governing same.

- a. First, the Assigned Contracts are necessary to run the business segments associated with the purchased assets. As such, they are essential to inducing the best offer for the purchased assets.
- b. Second, it is unlikely that any purchaser would want to acquire any assets on a going-concern basis unless a significant number of the Assigned Contracts needed to conduct the business and manage the day-to-day operations were included in the transaction.
- c. Third, the Stalking Horse Purchase Agreement provides that the assumption and assignment of certain Assigned Contracts is integral to, and inextricably integrated in, the sale.
- d. Finally, certain Assigned Contracts will be assumed and assigned through the process approved by the Court by the Bidding Procedures Order, and thus will be reviewed by key constituents, including the contract and lease counterparties.

32. Accordingly, the Debtors submit that the assumption and assignment of the Assigned Contracts by way of the Assumption Procedures should be approved as an exercise of their business judgment.

**C. Defaults Under the Assigned Contracts Will be Cured Through the Sale.**

33. Upon finding that a debtor has exercised its business judgment in determining that assuming an executory contract or unexpired lease is in the best interest of its estate, courts must then evaluate whether the assumption meets the requirements of section 365(b) of the Bankruptcy Code that a debtor (a) cure, or provide adequate assurance of prompt cure of, prepetition defaults in the executory contract, (b) compensate parties for pecuniary losses arising therefrom, and (c) provide adequate assurance of future performance thereunder. 11 U.S.C. § 365. This section

“attempts to strike a balance between two sometimes competing interests, the right of the contracting nondebtor to get the performance it bargained for and the right of the debtor’s creditors to get the benefit of the debtor’s bargain.” *Matter of Luce Indus., Inc.*, 8 B.R. 100, 107 (Bankr. S.D.N.Y. 1980).

34. The Debtors submit that the statutory requirements of section 365(b)(1)(A) of the Bankruptcy Code will be promptly satisfied. Specifically, the Stalking Horse Purchase Agreement will ensure that all defaults associated with the Assigned Contracts are properly cured. Because the Bidding Procedures Order (once approved) provides a clear process by which to resolve disputes over cure amounts or other defaults, the Debtors are confident that if defaults exist that must be cured, such cure will be achieved fairly, efficiently, and properly, consistent with the Bankruptcy Code and with due respect to the rights of non-debtor parties.

**D. Non-Debtor Parties Will be Adequately Assured of Future Performance.**

35. Similarly, the Debtors submit that the third requirement of section 365(b)(1)(C) of the Bankruptcy Code—adequate assurance of future performance—is also satisfied given the facts and circumstances present here. “The phrase ‘adequate assurance of future performance’ adopted from section 2-609(1) of the Uniform Commercial Code, is to be given a practical, pragmatic construction based upon the facts and circumstances of each case.” *Matter of U.L. Radio Corp.*, 19 B.R. 537, 542 (Bankr. S.D.N.Y. 1982). Although no single solution will satisfy every case, the required assurance will fall short of an absolute guarantee of performance. Among other things, adequate assurance may be given by demonstrating the assignee’s financial health and experience in managing the type of enterprise or property assigned. *Luce Indus.*, 8 B.R. at 107; *see also In re Great Atl. & Pac. Tea Co., Inc.*, 472 B.R. 666, 674 (S.D.N.Y. 2012) (“A debtor need not provide ‘an absolute guarantee of performance.’”).

36. The Debtors believe that they can and will demonstrate that the requirements for assumption and assignment of certain Assigned Contracts to the Stalking Horse Bidder (or other successful bidder) will be satisfied at the Sale Hearing. As required by the Bidding Procedures, the Debtors will evaluate the financial wherewithal of potential bidders before designating such party a Qualified Bidder (e.g., financial credibility, willingness and ability of the interested party to perform under the Assigned Contracts). Further, all counterparties will be provided with notice of the proposed assumption and assignment and will have adequate time and opportunity to object to the assumption or proposed cure amount or otherwise be heard with respect thereto.

**Waiver of Bankruptcy Rule 6004(a) and 6004(h)**

37. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

**Notice**

38. The Debtors have provided notice of this motion to the entities on the Master Service List (available on the Debtors' case website at [www.cases.primeclerk.com/MurrayEnergy](http://www.cases.primeclerk.com/MurrayEnergy)). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

**No Prior Request**

39. No prior request for the relief sought in this motion has been made to this or any other court.

WHEREFORE, the Debtors respectfully request entry of the Bidding Procedures Order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Dated: December 4, 2019  
Columbus, Ohio

/s/ Kim Martin Lewis

Kim Martin Lewis (0043533)  
Alexandra S. Horwitz (0096799)  
**DINSMORE & SHOHL LLP**  
255 East Fifth Street  
Suite 1900  
Cincinnati, Ohio 45202  
Telephone: (513) 977-8200  
Facsimile: (513) 977-8141  
Email: kim.lewis@dinsmore.com  
allie.horwitz@dinsmore.com

Nicole L. Greenblatt, P.C. (admitted *pro hac vice*)  
Mark McKane, P.C. (admitted *pro hac vice*)  
**KIRKLAND & ELLIS LLP**  
**KIRKLAND & ELLIS INTERNATIONAL LLP**  
601 Lexington Avenue  
New York, New York 10022  
Telephone: (212) 446-4800  
Facsimile: (212) 446-4900  
Email: nicole.greenblatt@kirkland.com  
mark.mckane@kirkland.com

*Proposed Counsel to the Debtors and Debtors in Possession* - and -

Ross M. Kwasteniet, P.C. (admitted *pro hac vice*)  
Joseph M. Graham (admitted *pro hac vice*)  
**KIRKLAND & ELLIS LLP**  
**KIRKLAND & ELLIS INTERNATIONAL LLP**  
300 North LaSalle  
Chicago, Illinois 60654  
Telephone: (312) 862-2000  
Facsimile: (312) 862-2200  
Email: ross.kwasteniet@kirkland.com  
joe.graham@kirkland.com

*Proposed Counsel to the Debtors and Debtors in Possession*

**Exhibit A**

**Proposed Bidding Procedures Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

	)	
In re:	)	Chapter 11
	)	
MURRAY ENERGY HOLDINGS CO., <i>et al.</i> , <sup>1</sup>	)	Case No. 19-56885 (JEH)
	)	
	)	Judge John E. Hoffman, Jr.
	)	
Debtors.	)	(Jointly Administered)
	)	

**ORDER (I) AUTHORIZING THE DEBTORS TO ENTER INTO AND PERFORM UNDER THE STALKING HORSE PURCHASE AGREEMENT, (II) APPROVING THE BIDDING PROCEDURES IN CONNECTION WITH THE SALE OF ALL OR SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS, (III) APPROVING THE PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (IV) GRANTING RELATED RELIEF [RELATED TO DOCKET NO. \_\_\_\_\_]**

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<sup>1</sup> Due to the large number of Debtors in these chapter 11 cases, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. Such information may be obtained on the website of the Debtors' claims and noticing agent at <https://cases.primeclerk.com/MurrayEnergy>. The location of Debtor Murray Energy Holdings Co.'s principal place of business and the Debtors' service address in these chapter 11 cases is 46226 National Road, St. Clairsville, Ohio 43950.

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”), (a) authorizing the Debtors to enter into and perform under an asset purchase agreement (the “Stalking Horse Purchase Agreement”), consistent with the term sheet hereto as **Exhibit 1** (the “Term Sheet”), (b) authorizing and approving the bidding procedures attached hereto as **Exhibit 2** (the “Bidding Procedures”) in connection with the sale of the Assets, (c) approving procedures for assuming and assigning executory contracts and unexpired leases and certain related notices, (d) establishing dates and deadlines in connection with the Sale and the approval thereof, including the Preliminary Bid Deadline, the Final Bid Deadline, the date of the Auction, if any, and the Sale Hearing, (e) approving the manner of notice of the Sale and the Auction, if any, and (f) granting related relief, all as more fully set forth in the Motion; and upon the Declaration of John Startin; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *General Order 30-2* from the United States Bankruptcy Court for the Southern District of Ohio, dated October 10, 2019; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and this Court having found that the Debtors’ notice of the Motion and opportunity for a hearing on the Motion were appropriate and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support

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<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion or the Bidding Procedures, as applicable.

of the relief requested therein at a hearing before this Court (the “Hearing”); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor,

**THE COURT HEREBY FINDS THAT:**

A. Bidding Procedures. The Debtors have articulated good and sufficient reasons for authorizing and approving the Bidding Procedures, which are fair, reasonable, and appropriate under the circumstances and designed to maximize the recovery on, and realizable value of, the Debtors’ assets (the “Assets”), as determined by the Debtors in an exercise of their business judgment.

B. Stalking Horse Purchase Agreement. The Debtors have demonstrated and proven that entry into an asset purchase agreement (the “Stalking Horse Purchase Agreement”), consistent with the Term Sheet attached hereto as **Exhibit 1**, with an entity to be formed at the direction of the Ad Hoc Group of Superpriority Lenders (the “Stalking Horse Bidder”) for the Assets identified therein, is in the best interests of the Debtors, their creditors, and their estates and that performance under the Stalking Horse Purchase Agreement represents a prudent exercise of the Debtors’ business judgment. The Bidding Procedures and the Stalking Horse Purchase Agreement were negotiated at arm’s-length and in good faith by the Debtors and the Stalking Horse Bidder, without collusion. Furthermore, the Stalking Horse Purchase Agreement will serve as a minimum or floor bid on which the Debtors and other bidders may rely. The Stalking Horse Bidder has provided a material benefit to the Debtors and their creditors by increasing the likelihood that, given the circumstances, the best possible price for the Assets will be received. The Stalking Horse Purchase Agreement represents the highest or otherwise best offer that the Debtors have received to date to

purchase the Assets. The process for selection of the Stalking Horse Bidder was fair and appropriate under the circumstances and in the best interests of the Debtors' estates. Accordingly, the Debtors entry into the Stalking Horse Purchase Agreement is reasonable and appropriate, and represents the best method for maximizing the value of the Assets for the benefit of the Debtors' estates.

C. Stalking Horse Bidder. The Stalking Horse Bidder is not an "insider" or "affiliate" of any of the Debtors, as those terms are defined in section 101 of the Bankruptcy Code, and no common identity of incorporators, directors, or controlling stakeholders exist between the Stalking Horse Bidder and the Debtors. The Stalking Horse Bidder and its counsel and advisors have acted in "good faith" within the meaning of section 363(m) of the Bankruptcy Code in connection with the Stalking Horse Bidder's negotiation of the Bidding Procedures and entry into the Stalking Horse Purchase Agreement.

D. Sale Notice. The notice provided by the Debtors regarding the Sale (the "Sale Notice") is reasonably calculated to provide all interested parties with timely and proper notice of the proposed Sale, including: (i) the date, time, and place of the Auction (if one is held); (ii) the Bidding Procedures and certain dates and deadlines related thereto; (iii) the objection deadline for the Sale and the date, time, and place of the Sale Hearing; (iv) reasonably specific identification of the assets for sale; (v) instructions for promptly obtaining a copy of the Stalking Horse Purchase Agreement; (vi) representations describing the Sale as being free and clear of liens, claims, interests, and other encumbrances, with all such liens, claims, interests, and other encumbrances attaching with the same validity and priority to the sale proceeds subject to customary exceptions for permitted liens; (vii) the commitment by the Stalking Horse Bidder to assume certain liabilities disclosed in the Stalking Horse Purchase Agreement; and (viii) notice of the proposed assumption

and assignment of the Assigned Contracts (or to another Successful Bidder arising from the Auction, if any) and the right, procedures, and deadlines for objecting thereto, and no other or further notice of the Sale shall be required.

E. Auction. The Auction, if held, is necessary to determine whether any entity other than the Stalking Horse Bidder is willing to enter into a definitive agreement on terms and conditions more favorable to the Debtors and their estates than the Stalking Horse Purchase Agreement.

F. Assumption Procedures. The Contract Assumption Notice (as defined herein) is reasonably calculated to provide counterparties to the Assigned Contracts with proper notice of the intended assumption and assignment of their executory contracts, any Cure Payments (as defined herein), and the Assumption Procedures (as defined herein).

G. Other Findings. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the preceding findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the preceding conclusions of law constitute findings of fact, they are adopted as such.

**IT IS HEREBY ORDERED THAT:**

1. The Motion is granted to the extent set forth in this Order.
2. All objections to the relief requested in the Motion that have not been withdrawn, waived, or settled prior to or at the Hearing are overruled.

**I. Important Dates and Deadlines.**

3. Preliminary Bid Deadline. January 21, 2020, at 4:00 p.m., prevailing Eastern Time, is the deadline by which any party interested in participating in the bidding process is

encouraged to deliver a preliminary Non-Binding Indication of Interest, including the Indication of Interest Documents.

4. **Final Bid Deadline.** March 2, 2020, at 4:00 p.m., prevailing Eastern Time, is the deadline by which all Qualified Bids must be **actually received** by the parties specified in the Bidding Procedures.

5. **Auction.** March 12, 2020, at 10:00 a.m., prevailing Eastern Time, is the date and time the Auction, if one is needed, will be held in accordance with the Bidding Procedures at the offices of proposed counsel to the Debtors: Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York, 10022. For the avoidance of doubt, the Debtors may also conduct more than one Auction with respect to non-overlapping material portions of the Debtors' Assets. The Debtors shall send written notice of the date, time, and place of the Auction to the Qualified Bidders no later than two business days before such Auction, and will post notice of the date, time, and place of the Auction no later than two business days before such Auction on the website of the Debtors' notice, claims, and solicitation agent, Prime Clerk LLC, at <https://cases.primeclerk.com/MurrayEnergy>.

6. **Sale Objection Deadline.** \_\_\_\_\_, 2020,<sup>3</sup> at 4:00 p.m., prevailing Eastern Time (the "**Sale Objection Deadline**") is the deadline by which objections to the entry of an order by the Court approving the Sale must (a) be in writing, (b) state, with specificity, the legal and factual bases thereof, and (c) be filed with the Court and served so as to be actually received by the entities on the Master Service List (as defined in the case management order in these chapter 11 cases [Docket No. 113] (the "**Case Management Order**")). Any party or entity who

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<sup>3</sup> Date that is 7 days before Sale Hearing.

fails to timely make an objection to the Sale on or before the Sale Objection Deadline shall be forever barred from asserting any objection to the Sale, including with respect to the transfer of the assets free and clear of all liens, claims, encumbrances, and other interests.

7. **Sale Hearing.** \_\_\_\_\_, 2020, at \_\_\_:\_\_\_ .m.,<sup>4</sup> prevailing Eastern Time, is the date and time for the hearing for the Court to consider the Successful Bid or Successful Bids, pursuant to which the Debtors and the Successful Bidder or Successful Bidders will consummate the Sale; *provided, however*, that the Sale Hearing may be continued by the Debtors in accordance with the Bidding Procedures, from time to time, without further notice to creditors or parties in interest.

8. If at the conclusion of the Auction, it is determined, in accordance with the Bidding Procedures and any other applicable agreements to which the Debtors are a party, that the Sale will occur pursuant to section 363 of the Bankruptcy Code as opposed to pursuant to a chapter 11 plan, the Debtors will contact the Court's chambers to obtain a new Sale Hearing date and time and, without further order of the Court, the Debtors must provide notice to the Notice Parties (as defined herein) of such updated Sale Hearing and the Sale Objection Deadline, which sale objection deadline will be 4:00 p.m., prevailing Eastern Time, on the date that is 7 calendar days before the updated Sale Hearing date. If the Sale will occur pursuant to section 363 of the Bankruptcy Code, as soon as practicable after the conclusion of the Auction, but no later than before the Sale Hearing, the Debtors shall file a proposed form of order approving the Sale as agreed upon between the Debtors and the Successful Bidder, which proposed form of order shall be reasonably acceptable to the Ad Hoc Group of Superpriority Lenders.

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<sup>4</sup> Date that is approximately 190 days from the Petition Date, subject to Court availability.

9. The dates and deadlines set forth in this Order are subject to modification by the Debtors in accordance with the Bidding Procedures.

## **II. Stalking Horse Purchase Agreement.**

10. The Stalking Horse Bidder shall be deemed a Qualified Bidder, and the bid of the Stalking Horse Bidder contemplated by the Stalking Horse Purchase Agreement (the “Stalking Horse Bid”) shall be deemed a Qualified Bid.

## **III. Auction, Bidding Procedures, Sale Notice, and Related Relief.**

11. The Bidding Procedures, substantially in the form attached hereto as **Exhibit 2**, are incorporated herein and are hereby approved in their entirety, and the Bidding Procedures shall govern the submission, receipt, and analysis of all Bids relating to any proposed Sale. Any party desiring to submit a Bid shall comply with the Bidding Procedures and this Order. The Debtors are authorized to take any and all reasonable actions necessary to implement the Bidding Procedures.

12. No person or entity shall be entitled to any expense reimbursement, break-up fee, “topping,” termination, or other similar fee or payment in connection with any Sale, and by submitting a bid, such person or entity is deemed to have waived their right to request or to file with this Court any request for expense reimbursement or any fee of any nature, whether by virtue of section 503(b) of the Bankruptcy Code or otherwise.

13. Any deposit provided by a Qualified Bidder shall be held in escrow by the Debtors or their agent in accordance with the Bidding Procedures, and shall not become property of the Debtors’ bankruptcy estates unless and until released from escrow to the Debtors pursuant to the terms of the applicable escrow agreement or order of this Court. The Debtors will treat such

deposits in accordance with the terms and conditions of the DIP Orders and the DIP Credit Agreement (as defined by the DIP Orders).

14. The Sale Notice, substantially in the form attached hereto as **Exhibit 3**, is hereby approved. As soon as reasonably practicable following the entry of this Order, the Debtors will cause the Bidding Procedures, Sale Notice, and Contract Assumption Notice to be served upon the following parties, and their respective counsel, if known (collectively, the “Notice Parties”): (a) the UCC; (b) the U.S. Trustee for the Southern District of Ohio; (c) the indenture trustees under the Debtors’ prepetition indentures; (d) the administrative agents under the Debtors’ prepetition term loan facilities; (e) the administrative agent under the Debtors’ debtor-in-possession financing facility; (f) counsel to the Ad Hoc Group of Superpriority Lenders; (g) the United States Attorney’s Office for the Southern District of Ohio; (h) the Internal Revenue Service; (i) the Environmental Protection Agency and similar state environmental agencies for states in which the Debtors operate; (j) the attorneys general for the states in which the Debtors operate; (k) the Pension Benefit Guaranty Corporation; (l) the United Mine Workers of America (“UMWA”); (m) the Seafarers International Union; (n) the UMWA 1974 Pension Plan and Trust, UMWA 1992 Benefit Plan, UMWA 1993 Benefit Plan, and UMWA 1988 Cash Deferred Savings Plan; (o) any parties known or reasonably believed to have expressed an interest in the Debtors’ assets; (p) all entities known or reasonably believed to have asserted a lien, encumbrance, claim, or other interest in any of the Debtors’ assets; and (q) any party that has requested notice pursuant to Bankruptcy Rule 2002. In addition, as soon as practicable, after entry of this Order, the Debtors will publish the Sale Notice, with any modification necessary for ease of publication, once in *The Wall Street Journal*, the *New York Times*, *The Birmingham News*, *The Columbus Dispatch*, the *Herald Dispatch*, *The Lexington*

*Herald Leader*, the *Courier Journal*, and the *Salt Lake Tribune* to provide notice to any other potential interested parties.

#### **IV. The Assumption and Assignment Procedures.**

15. The procedures set forth below regarding the assumption and assignment of the executory contracts proposed to be assumed by the Debtors pursuant to section 365(b) of the Bankruptcy Code and assigned to the Stalking Horse Bidder (or other Successful Bidder, if any) pursuant to section 365(f) of the Bankruptcy Code in connection with the Sale (the “Assumption Procedures”) are hereby approved to the extent set forth herein.

16. These Assumption Procedures shall govern the assumption and assignment of all of the Debtors’ executory contracts and unexpired leases of real property to be assumed and assigned in connection with the Sale (each, an “Assigned Contract,” and, collectively, the “Assigned Contracts”), subject to the payment of any payments necessary to cure any defaults arising under any Assigned Contract (the “Cure Payments”):

- a. **Contract Assumption Notice.** No less than 21 calendar days prior to the Sale Objection Deadline (the “Assumption and Assignment Service Deadline”), the Debtors shall serve a notice of contract assumption (the “Contract Assumption Notice”), in substantially the form attached hereto as **Exhibit 4**, via overnight delivery on all counterparties to all potential Assigned Contracts and provide a copy of the same to the Stalking Horse Bidder and the Consultation Parties. The Contract Assumption Notice shall inform each recipient of the timing and procedures relating to such assumption and assignment, and, to the extent applicable, (i) the title of the executory contract or unexpired leases of real property, as applicable, (ii) the name of the counterparty to the executory contract or unexpired leases of real property, as applicable, (iii) the Debtors’ good faith estimates of the Cure Payments (if any) required in connection with the executory contract or unexpired leases of real property, as applicable, (iv) the identity of the Stalking Horse Bidder (as assignee), and (v) the Sale Objection Deadline; *provided, however*, that service of a Contract Assumption Notice does not constitute an admission that such contract is an executory contract or unexpired lease of real property or that such stated Cure Payment constitutes a claim against the Debtors or a right against the Stalking Horse Bidder (all rights with respect thereto being expressly reserved).

Further, the inclusion of a contract or lease on the Contract Assumption Notice is not a guarantee that such contract will ultimately be assumed and assigned.

- b. Cure Payments.** The payment of the applicable Cure Payments by the Successful Bidder, as applicable, shall (i) effect a cure of all defaults existing thereunder, (ii) compensate for any actual pecuniary loss to such counterparty resulting from such default, and (iii) together with the assumption of the Assigned Contracts by the Debtors and the assignment of the Assigned Contracts to the Stalking Horse Bidder (or other Successful Bidder), constitute adequate assurance of future performance thereof.
- c. Additions.** The Stalking Horse Bidder may designate, up to the Final Bid Deadline, additional executory contracts or unexpired leases of real property as agreements to be assumed by the Debtors and assigned to the Stalking Horse Bidder (the “Additional Assigned Contracts”); *provided* upon their receipt of notice of the Additional Assigned Contracts by the Stalking Horse Bidder, the Debtors shall promptly provide the Consultation Parties with notice of the Additional Assigned Contracts and corresponding Cure Payment; *provided, further*, that the Stalking Horse Bidder shall have the right to add any contract as an Assumed Contract (so long as the Stalking Horse Bidder agrees the related Cure Costs will be taken into account in Funded Liabilities, as defined by the Term Sheet) up until two business days before the closing date of the transaction. By the later of (x) 3 business days of notice of the Additional Assigned Contracts by the Stalking Horse Bidder and (y) the Assumption and Assignment Service Deadline, the Debtors shall serve a Contract Assumption Notice on each of the counterparties to such Additional Assigned Contracts and their counsel of record, if any, indicating (i) that the Debtors intend to assume and assign the counterparty’s executory contract or unexpired lease to the Stalking Horse Bidder, and (ii) the corresponding Cure Payment.
- d. Eliminations.** The Stalking Horse Bidder may remove, up to the Final Bid Deadline, any executory contract or unexpired lease of real property to be assumed by the Debtors and assigned to the Stalking Horse Bidder (the “Eliminated Agreements”); *provided* that the Stalking Horse Bidder shall have the right to remove any executory contract or unexpired lease of real property up until two business days before the closing date of the transaction. Upon the Stalking Horse Bidder’s removal of an Eliminated Agreement and solely to the extent such parties received a Contract Assumption Notice, the Debtors shall serve a notice on each of the impacted counterparties and their counsel of record, if any, and the Consultation Parties indicating that the Debtors no longer intend to assign the counterparty’s executory contract or unexpired lease to the Stalking Horse Bidder in connection with the Sale.
- e. Supplemental Contract Assumption Notice.** Although the Debtors intend to make a good faith effort to identify all Assigned Contracts that may be assumed and assigned in connection with a Sale, (i) the Debtors may discover certain

executory contracts or unexpired leases inadvertently omitted from the Assigned Contracts list or (ii) a Successful Bidder(s) may identify other executory contracts or unexpired leases that it desires to assume and assign in connection with the Sale, or that such Successful Bidder(s) identifies that it would seek to remove such executory contract or unexpired lease from the Assigned Contract list. Accordingly, the Debtors reserve the right, but only in accordance with the Stalking Horse Purchase Agreement, or as otherwise agreed by the Debtors and the Successful Bidder, in consultation with the Consultation Parties, at any time after the Assumption and Assignment Service Deadline and before the closing of a Sale, to (i) supplement the list of Assigned Contracts with previously omitted executory contracts or unexpired leases, (ii) remove Assigned Contracts from the list of executory contracts or unexpired leases ultimately selected as Assigned Contracts that a Successful Bidder proposes be assumed and assigned to it in connection with a Sale, and/or (iii) modify the previously stated Cure Payment associated with any Assigned Contracts. In the event the Debtors exercise any of these reserved rights, the Debtors will promptly serve a supplemental notice of contract assumption (a “Supplemental Assumption Notice”) on each of the counterparties to such Assigned Contracts and their counsel of record, if any, and the Consultation Parties. Each Supplemental Assumption Notice will include the same information with respect to listed Assigned Contracts as was included in the Contract Assumption Notice.

- f. Objections.** Objections, if any, to the proposed assumption and assignment or the Cure Payment proposed with respect thereto, must (i) be in writing, (ii) comply with the applicable provisions of the Bankruptcy Rules, the Local Rules, and Case Management Order, (iii) state with specificity the nature of the objection and, if the objection pertains to the proposed Cure Payment, the correct cure amount alleged by the objecting counterparty, together with any applicable and appropriate documentation in support thereof, and (iv) be filed with the Court and served upon, so as to be actually received by, (w) proposed counsel to the Debtors, (x) counsel to the Ad Hoc Group of Superpriority Lenders, and (y) proposed counsel to the UCC, before the Sale Objection Deadline or the deadline set forth in the Supplemental Assumption Notice (which shall be the later of the Sale Objection Deadline or at 4:00 p.m., prevailing Eastern Time, on the date that is 14 calendar days after the date of service of the Supplemental Assumption Notice), as applicable.
- g. Dispute Resolution.** In the event that the Debtors and the non-debtor counterparty cannot resolve any objection to the Cure Payment, the Debtors shall segregate the disputed amount of the Cure Payment pending a resolution of the dispute by the Court or mutual agreement by the parties. Any objection to the proposed assumption and assignment of a contract or related cure proposed in connection with the Sale that remains unresolved as of the Sale Hearing, shall be conditionally assumed and assigned, pending resolution of the objection after notice and a hearing (which may be the Sale Hearing or at a later date as fixed by the Court).

- h. Contract Assumption.** No Assigned Contract shall be deemed assumed and assigned pursuant to section 365 of the Bankruptcy Code until the later of (i) the date the Court has entered an order assuming and assigning such Assigned Contracts or (ii) the date the Sale has closed.

17. Any party failing to timely file an objection to the Cure Payment or the proposed assumption and assignment of an Assigned Contract or Additional Assigned Contract listed on the Contract Assumption Notice is deemed to have consented to (a) such Cure Payment, (b) the assumption and assignment of such Assigned Contract or Additional Assigned Contract, (c) the related relief requested in the Motion, and (d) the Sale. Such party shall be forever barred and estopped from objecting to the Cure Payments, the assumption and assignment of the Assigned Contract, or Additional Assigned Contract, adequate assurance of future performance, the relief requested in the Motion, whether applicable law excuses such counterparty from accepting performance by, or rendering performance to, the Stalking Horse Bidder or Successful Bidder, as applicable, for purposes of section 365(c)(1) of the Bankruptcy Code, and from asserting any additional cure or other amounts against the Debtors and the Stalking Horse Bidder or Successful Bidder, as applicable, with respect to such party's Assigned Contract or Additional Assigned Contract.

**V. Miscellaneous.**

18. Nothing in this Order is intended to, or shall be deemed to, modify, waive or impair any of the provisions of the *Interim Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Superpriority Administrative Expense Status, (III) Granting Adequate Protection to the Prepetition Secured Lenders, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* [Docket No. 91] and any final order entered with respect thereto (the "DIP Orders")

and the DIP Documents (as defined in the DIP Orders), or the rights and obligations of the Debtors, the DIP Agent, and the DIP Lenders thereunder.

19. The failure to include or reference a particular provision of the Bidding Procedures specifically in this Order shall not diminish or impair the effectiveness or enforceability of such a provision.

20. In the event of any inconsistencies between this Order and the Motion, this Order shall govern in all respects. In the event of any inconsistencies between this Order and the Bidding Procedures, the Bidding Procedures shall govern in all respects.

21. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

22. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

23. The Debtors shall serve this Order in accordance with all applicable rules and shall file a certificate of service evidencing compliance with this requirement.

24. The Debtors are authorized to take all reasonable actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

25. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

SO ORDERED.

Copies to Default List.

**Exhibit 1**

**Term Sheet**

**Sale Transaction Term Sheet**

THIS TERM SHEET DOES NOT CONSTITUTE (NOR SHALL IT BE CONSTRUED AS) AN OFFER WITH RESPECT TO ANY SECURITIES OF THE COMPANY. NOTHING IN THIS TERM SHEET SHALL BE DEEMED TO BE THE SOLICITATION OF AN ACCEPTANCE OR REJECTION OF A CHAPTER 11 PLAN. ANY SUCH OFFER OR SOLICITATION SHALL COMPLY WITH ALL APPLICABLE SECURITIES LAWS AND/OR PROVISIONS OF THE BANKRUPTCY CODE. THE PROPOSALS CONTAINED HEREIN ARE SUBJECT TO FURTHER DILIGENCE AND TAX ANALYSIS.

THIS TERM SHEET HAS BEEN PRODUCED FOR DISCUSSION AND SETTLEMENT PURPOSES ONLY AND IS SUBJECT TO THE PROVISIONS OF RULE 408 OF THE FEDERAL RULES OF EVIDENCE AND OTHER SIMILAR APPLICABLE STATE AND FEDERAL RULES PROTECTING THE USE OR DISCLOSURE OF CONFIDENTIAL SETTLEMENT DISCUSSIONS. NOTHING HEREIN SHALL BE DEEMED TO BE AN ADMISSION OF FACT OR LIABILITY BY ANY PARTY.

Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the restructuring term sheet attached to the Restructuring Support Agreement, dated as of October 28, 2019, among Murray Energy Holdings Co. and the other parties thereto (the “RSA”) as **Exhibit A** (the “Plan Term Sheet”). References herein to “including” mean “including, without limitation”.

**Transaction Overview**

<b>Sellers</b>	“ <u>Company</u> ” means, collectively, Murray Energy Holdings Co. and each of its direct and indirect subsidiaries that hold the Purchased Assets (the Company and each such subsidiary, a “ <u>Seller</u> ” and together, the “ <u>Sellers</u> ”).
<b>Purchaser</b>	<p>A newly-formed Delaware corporation, limited liability company or other legal entity, with the choice of entity form and all corporate documents related thereto to be decided by the Requisite Consenting Superpriority Lenders, and the entity formed by (or on behalf of), the Superpriority Lenders (such entity, “<u>Purchaser</u>”). The Purchase Agreement and the related Confirmation Order will permit Purchaser to assign its rights and obligations in whole or in part to one or more of its affiliates.</p> <p>Immediately following the closing, Purchaser will be owned, directly or indirectly, pro rata by the Superpriority Lenders based on their respective Superpriority Claims as of the closing, subject to dilution for the MIP.</p> <p>Purchaser will have the financial ability to consummate the Sale (as defined below) and comply with sections 365 and 1123 of the Bankruptcy Code, including providing adequate assurance of future performance under all contracts to be assumed in the Sale.</p>

<b>Sale</b>	This Term Sheet describes (i) a proposed sale by Sellers of all of their right, title, and interest in, to, and under the Purchased Assets (as defined below) to Purchaser, free and clear of any and all liens, pledges, options, charges, liabilities, claims, successor liability or security interests or other encumbrances (except for customary permitted encumbrances to be agreed) and (ii) in connection therewith, the assumption by Purchaser of the Assumed Liabilities (as defined below), pursuant to sections 105, 363 and 1123 of the Bankruptcy Code (collectively, the “ <u>Sale</u> ”).
<b>Purchase Price</b>	<p>The aggregate consideration for the Purchased Assets (as defined below) shall consist of the following (collectively, the “<u>Purchase Price</u>”):</p> <ul style="list-style-type: none"> <li>(i) assumption of the Assumed Liabilities (as defined below);</li> <li>(ii) a credit bid of certain debt owed by the Company to the Superpriority Lenders in an amount to be determined by the Requisite Consenting Superpriority Lenders as set forth in the definitive Purchase Agreement, pursuant to sections 363 and 1123 of the Bankruptcy Code; and</li> <li>(iii) such other consideration as determined by the Requisite Consenting Superpriority Lenders.</li> </ul>
<b>Purchased Assets</b>	<p>“<u>Purchased Assets</u>”<sup>1</sup> shall include the following assets and equity interests (and such other assets as Purchaser may determine to include prior to the Bid Deadline; provided, that should any assets listed as Excluded Assets at the time of execution of the definitive Purchase Agreement be added to the Purchased Assets prior to the Bid Deadline, then the Purchase Price shall be adjusted in an amount and manner acceptable to the Purchaser to account for the value of any such assets):</p> <ul style="list-style-type: none"> <li>(i) all of the Company’s right, title and interest in and to the following assets and properties, in each case that are owned, held or used in or related to the Business (as defined below): <ul style="list-style-type: none"> <li>(1) the Assumed Contracts (as defined below);</li> </ul> </li> </ul>

<sup>1</sup> The entities that contain the Purchased Assets (other than the Acquired Equity Interests) include the following: (A) CCC Land Resources LLC, (B) CCC RCPC LLC, (C) Consolidation Coal Company, (D) the Eighty-Four Mining Company, (E) The Ohio Valley Coal Company, (F) The McElroy Coal Company, (G) UMCO Energy, Inc., (H) The American Coal Sales Company, (I) The Ohio Valley Transloading Company, (J) Murray American River Towing, Inc., (K) Murray American Transportation, Inc., (L) Ohio Energy Transportation, Inc., (M) Energy Transportation, Inc. (a subsidiary of Mill Creek Mining Company), (N) Anchor Longwall & Rebuild, Inc., (O) American Mine Services, Inc., (P) American Equipment & Machine, Inc., (Q) Murray Equipment & Machine, Inc., (R) West Virginia Resources, Inc. (a subsidiary of Mill Creek Mining Company), (S) Kanawha Transportation Center, Inc., (T) AMCA Coal Leasing, Inc., (U) West Ridge Resources, Inc., (V) Andalex Resources, Inc., (W) The American Coal Company, (X) Murray Kentucky Energy Services, Inc., (Y) OhioAmerican Energy, Inc., and (Z) Western Kentucky Resources, LLC.

	<p>(2) the infrastructure, equipment, machinery, furnishings, vehicles, aircraft, boats, vessels, rail cars, fixed assets and other tangible assets (including all mobile mining equipment, parts, supplies, tires and components) used in the Business (as defined below), in each case, to the extent that the underlying contract (if applicable) is an Assumed Contract;</p> <p>(3) all coal reserves, whether leased (to the extent the underlying lease is an Assumed Contract) or owned;</p> <p>(4) all coal inventory;</p> <p>(5) all gas inventory and reserves, whether leased (to the extent the underlying lease is an Assumed Contract) or owned;</p> <p>(6) the water treatment facilities and operating wells;</p> <p>(7) interests in and to leased or owned real property, including improvements, easements, mineral rights, mining rights, water rights, timber rights, subsidence rights and gas drilling rights; provided that in the case of leased real property such interests shall be Purchased Assets only to the extent the related lease is an Assumed Contract;</p> <p>(8) transferable or assignable permits;</p> <p>(9) intellectual property, software and technology;</p> <p>(10) expenses and deposits that have been prepaid by the Company and cash collateral securing letters of credit relating to the Business and issued on behalf of the Company;</p> <p>(11) accounts and other receivables;</p> <p>(12) all rights of the Sellers to use haul roads, utility easements and other rights of way and easements;</p> <p>(13) all insurance proceeds, reserves, benefits or claims of any Seller under the applicable insurance policies to the extent relating to the Assumed Liabilities, the Purchased Assets or the Business (collectively, the “<u>Insurance Proceeds and Claims</u>”);</p> <p>(14) all goodwill;</p> <p>(15) all demands, reimbursements and rights of whatever nature, to the extent related to the Purchased Assets or any Assumed Liability (as defined below), including rights under and pursuant to all warranties, representations, indemnities, licenses and guarantees made by suppliers of products, materials or equipment or components thereof, or arising from the breach by third parties</p>
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	<p>of their obligations under the Assumed Contracts (as defined below);</p> <p>(16) all rights of Sellers (and their affiliates) under non-disclosure, or confidentiality, non-compete or non-solicitation agreements;</p> <p>(17) books and records, including tax returns and other tax records that relate primarily to the Business or Purchased Assets;</p> <p>(18) tax refunds, credits or other benefits with respect to or related to taxes attributable to (i) (x) the Purchased Assets for a post-closing tax period and (y) taxes that are Assumed Liabilities and (ii) the Purchased Assets to the extent such taxes are paid by Purchaser;</p> <p>(19) all of the Company’s rights to commence and pursue any and all claims and causes of action related to the Business, including any claims and causes of action arising under the sections 502(d), 544, 545, 547, 548, and 550 of the Bankruptcy Code, or any other avoidance action under the Bankruptcy Code or applicable non-bankruptcy law; and</p> <p>(20) all cash and cash equivalents of the Company other than the Adjusted Wind-Down Amount (as defined below);</p> <p>(ii) all of the equity interests held by the Company in (1) Foresight Energy GP LLC, (2) Foresight Energy LP, (3) Murray Metallurgical Coal Holdings, LLC, (4) Murray Colombian Resources, LLC, (5) Javelin Global Commodities Holdings LLP, and (6) Javelin Investment Holdings LLC (clauses (1) - (6) collectively, the “<u>Acquired Equity Interests</u>”);</p> <p>(iii) the assets that relate to the Company’s corporate overhead function, including with respect to the real property at the Company’s corporate headquarters and all tangible personal property and interests therein;</p> <p>(iv) all other assets of Sellers primarily related to the Business, except for assets that are specifically excluded in any of the foregoing clauses or specifically listed as an Excluded Asset;</p> <p>“<u>Business</u>” means the Company’s operations relating to:</p> <p>(1) the following mining complexes: (i) the Harrison County mine, (ii) the Marion County mine, (iii) the Marshall County mine, (iv) the Monongalia County mine, (v) the Century Mine, (vi) the Ohio County mine, (vii) the Lila Canyon mine, (viii) the Genesis mine, (ix) the Pride mine, (x) the Paradise mine, (xi) The Ohio Valley Coal Company Powhatan #6 Mine, (xii) Crandall Canyon Mine, (xiii) West Ridge Mine, (xiv) Tower Mine and (xv) all idled and closed mines, including</p>
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	<p>(A) Lewis Creek Surface Mine, (B) Midway Surface Mine, (C) The American Coal Company - New Era Mine, (D) The American Coal Company - New Future Mine, (E) Equality Boot Surface Mine, (F) Paradise #9 Mine, (G) OhioAmerican Energy, Inc. - Salt Run Mine #1 and (H) South Crandall Canyon Mine.</p> <p>(2) the land and livestock business owned by Pleasant Farms, Inc.</p>
<p><b>Assumed Contracts / Excluded Contracts</b></p>	<p>“<u>Assumed Contracts</u>” shall consist of (i) the executory contracts, unexpired leases and other agreements set forth on a schedule as determined by the Required Consenting Superpriority Lenders and (ii) such other contracts, leases and agreements entered into by the Company after the date of the Purchase Agreement with the consent of the Required Consenting Superpriority Lenders; provided, that such consent will not be required with respect to contracts, leases and agreements that are entered into in the ordinary course of business and not reasonably anticipated to result in annual expenditures in excess of an amount to be agreed that is acceptable to the Purchaser or aggregate expenditures in excess of an amount to be agreed that is acceptable to the Purchaser (the contracts, leases and agreements in clauses (i) and (ii) to be set forth on the “<u>Assumed Contracts Schedule</u>”), in each case, to the extent not previously rejected with the consent of the Required Consenting Superpriority Lenders.</p> <p>Purchaser shall have the right to amend the Assumed Contracts Schedules at any time prior to the Bid Deadline to add or remove any contract as an Assumed Contract; <u>provided</u> that Purchaser shall have the further right to amend the Assumed Contracts Schedules at any time prior to two business days before the closing date to (i) add any contract as an Assumed Contract (so long as Purchaser agrees the related Cure Costs (as defined below) will be taken into account in Funded Liabilities, as described below) or (ii) remove any contract as an Assumed Contract that Purchaser does not wish to assume (and for the avoidance of doubt, any related Cure Costs shall not be Funded Liabilities).</p> <p>To the extent any additional executory contracts or unexpired leases are identified after the Bid Deadline, Purchaser shall have the right to add such executory contracts or unexpired leases to the Assumed Contracts Schedules (so long as Purchaser agrees the related Cure Costs will be taken into account in Funded Liabilities, as described below).</p> <p>Purchaser shall not acquire, assume or have any liability with respect to any contract of the Company other than the Assumed Contracts (any such contract, an “<u>Excluded Contract</u>”).</p>
<p><b>Excluded Assets</b></p>	<p>The Purchased Assets shall not include the following, among other assets which Purchaser may determine to exclude prior to the Bid</p>

	<p>Deadline:</p> <ul style="list-style-type: none"> <li>(i) all assets of the Company that are not Purchased Assets,</li> <li>(ii) cash in an amount acceptable to the Requisite Consenting Superpriority Lenders and the Company (which amount shall be agreed no later than 14 days prior to the first day of the hearing to consider confirmation of the Plan) to fund (i) costs for the wind down of the Sellers’ estates (the “<u>Wind-Down Amount</u>”) and (ii) the amount of Funded Liabilities not assumed by Purchaser (as calculated in accordance with the “Funded Liabilities” section herein),</li> <li>(iii) minute books, stock ledgers and organizational documents of the Company,</li> <li>(iv) contracts and leases of the Sellers that are not Assumed Contracts,</li> <li>(v) equity securities of, or ownership in, the Sellers (for the avoidance of doubt, not including the Acquired Equity Interests),</li> <li>(vi) director and officer insurance policies and claims thereunder,</li> <li>(vii) all insurance policies of the Sellers, except for the Insurance Proceeds and Claims,</li> <li>(viii) all prepaid accounts and deposits to the extent unrelated to the Business,</li> <li>(ix) all rights to any refunds, credits, or other benefits with respect to or related to taxes, except as expressly listed in Item 18 of Purchased Assets,</li> <li>(x) tax returns and other tax records for each Seller and each subsidiary of each Seller (other than such tax returns and tax records (1) solely related to the Acquired Equity Interests or (2) primarily related to the Business or Purchased Assets), and</li> <li>(xi) the oil and gas business operated by American Natural Gas Inc. (collectively, the “<u>Excluded Assets</u>”).</li> </ul>
<p><b>Assumed Liabilities</b></p>	<p>“<u>Assumed Liabilities</u>” shall include only the following liabilities and obligations of the Sellers:</p> <ul style="list-style-type: none"> <li>(i) workers’ compensation liabilities relating to the current and former employees of Sellers or any predecessor of Sellers (“<u>Business Employees</u>”) who are hired by Purchaser (“<u>Purchaser Employees</u>”) to the extent such liabilities arise out of an event that first occurs after the closing date;</li> <li>(ii) any and all Black Lung liabilities of any Purchaser Employee to</li> </ul>

	<p>the extent first occurring on or after the lapse of the statutory period following the closing date for Purchaser to become a responsible operator to and with respect to such Employee of Purchaser under the Black Lung Benefits Act or under the Federal Coal Mine Health and Safety Act of 1969;</p> <p>(iii) to the extent required by law, all liabilities and obligations arising under environmental or mining safety laws or requirements, including any reclamation obligations, in respect of the ownership or operation of the Purchased Assets (excluding any fines or penalties arising from pre-closing violations);</p> <p>(iv) all liabilities arising under the Assumed Contracts to the extent arising after the closing date;</p> <p>(v) the Funded Liabilities (without duplication, and to the extent assumed by the Purchaser as set forth under “Funded Liabilities” below);</p> <p>(vi) all trade payables relating to the Business or the Purchased Assets and arising after the closing date;</p> <p>(vii) all liabilities for taxes (other than income taxes of Sellers) with respect to the Purchased Assets to the extent attributable to any post-closing tax period (as determined pursuant to a customary allocation);</p> <p>(viii) transfer taxes; and</p> <p>(ix) those liabilities to be mutually agreed and set forth on a schedule to the Purchase Agreement.</p>
<p><b>Excluded Liabilities</b></p>	<p>All pre-petition and post-petition liabilities of the Sellers, other than Assumed Liabilities, shall be “<u>Excluded Liabilities</u>”, including the following:</p> <p>(i) all liabilities (other than taxes) with respect to actions and proceedings pending before the closing or to the extent against or giving rise to liability against the Business or the Purchased Assets prior to the closing, even if instituted after the closing;</p> <p>(ii) all liabilities or other obligations with respect to Business Employees (or their representatives) (including any Purchaser Employees) based on any action or inaction occurring prior to the closing date, including payroll, vacation, sick leave, unemployment benefits, retirement benefits, pension benefits, employee stock options, equity compensation, employee stock purchases, profit sharing plans, health care and other welfare plans or benefits (including COBRA), or any other employee plans or arrangements or benefits or other compensation of any kind to any employee or former employee, and obligations of any kind including any liability pursuant to the WARN</p>

	<p>Act;</p> <p>(iii) any liability (whether arising before, on or after the closing date) with respect to any Business Employee who is not hired by Purchaser;</p> <p>(iv) except as expressly included in Assumed Liabilities, all Black Lung liabilities and workers' compensation liabilities;</p> <p>(v) any liability or other obligations arising under, relating to or with respect to any employee benefit plan, policy, program, agreement or arrangement at any time maintained, sponsored or contributed by Sellers or any affiliate within the Sellers' controlled group under the Employee Retirement Income Security Act of 1974 ("<u>ERISA Affiliate</u>"), or with respect to which Sellers or any ERISA Affiliate has any liability, including with respect to any retiree medical or other welfare plan or underfunded pension liability to any employee benefit plan, the Pension Benefit Guaranty Corporation, the Internal Revenue Service or Department of Labor or otherwise;</p> <p>(vi) any liability or other obligations arising under, relating to or with respect to any multi-employer pension plan</p> <p>(vii) any liability or other obligations under any employment arrangement, severance, retention or termination agreement or arrangement with any employee, consultant or contractor (or its representatives) of Sellers;</p> <p>(viii) any liability arising under any contract other than an Assumed Contract;</p> <p>(ix) any liability or other obligations under any existing CBA (as defined below) (except as determined under "Collective Bargaining Agreements" below);</p> <p>(x) any monetary fines or penalties imposed in connection with any violations of environmental law relating to the pre-closing period (including any fines or penalties with respect to the pending West Virginia Consent Decree to address Surface Mining Control and Reclamation Act and Clean Water Act matters at Marion County Mine, Harrison County Mine, Marshall County Mine, and Murray American Energy);</p> <p>(xi) the Funded Liabilities (to the extent not assumed by Purchaser as set forth under "Funded Liabilities" below); and</p> <p>(xii) all liabilities with respect to the Excluded Assets, including any environmental or reclamation liabilities arising with respect to the Excluded Assets, any properties formerly owned or operated by Sellers or with respect to the Business that are not Purchased Assets or pre-</p>
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	closing offsite waste disposal.
<b>Funded Liabilities</b>	<p>As used herein, the term “<u>Funded Liabilities</u>” means collectively: (i) any claims related to the Purchased Assets entitled to priority status under section 507(b) of the Bankruptcy Code asserted as of the applicable bar date for such claim, (ii) any administrative expense claims related to the Purchased Assets arising under sections 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code asserted as of the applicable bar date for such claim, (iii) any other allowed claims, and, in the case of each of clauses (i), (ii) and (iii), solely to the extent the reinstatement, assumption, or payment of the allowed amount of each such claim is required to confirm the Plan under 1129 of the Bankruptcy Code and (iv) any cure costs with respect to any Assumed Contracts pursuant to section 365 of the Bankruptcy Code (such cure amounts, the “<u>Cure Costs</u>”). The amount of Funded Liabilities shall be an amount mutually agreed by Purchaser and Sellers.</p> <p>At the option of the Purchaser, each of the Funded Liabilities shall either (1) be assumed by the Purchaser and thereby become Assumed Liabilities, or (2) not be assumed by the Purchaser, in which case the Wind-Down Amount shall be adjusted on a dollar-for-dollar basis (the “<u>Adjusted Wind-Down Amount</u>”) to account for the amount of Funded Liabilities not assumed by Purchaser (net of any associated refunds, credits or similar benefits); provided, that if the Company’s cash at closing is less than the Adjusted Wind-Down Amount (any such shortfall, the “<u>Shortfall Amount</u>”) then Purchaser shall at its election either (a) fund such Shortfall Amount into the Sellers’ estates for purposes of facilitating the wind down of Sellers’ estates or (b) assume additional Funded Liabilities in an amount necessary to ensure that no Shortfall Amount exists.</p>
<b>Collective Bargaining Agreements</b>	<p>The Company must obtain the consent of the Required Consenting Superpriority Lenders before assuming, renewing, or extending (other than short-term extensions of no more than 30 days each, and no more than 90 days in the aggregate) the term of any collective bargaining agreement (“<u>CBA</u>”). To the extent the Company fails to reach an agreement with applicable authorized representatives of their employees regarding modifications to any of the Company’s CBAs and applicable authorized representatives of their retirees regarding modifications to the Company’s retiree benefits that is acceptable to the Required Consenting Superpriority Lenders, the Company must file the 1113/1114 Motion in accordance with the terms of the RSA and DIP Term Sheet.</p> <p>Purchaser shall not be obligated to accept or assume any existing or modified CBAs between the Company and its employees, and will not be bound by or accept the terms of any such existing or modified CBAs, except as otherwise expressly agreed by Purchaser in respect of the post-closing period.</p>

<b>Representations and Warranties in Purchase Agreement</b>	Sellers and Purchaser will make customary representations and warranties for a transaction of this type that are acceptable to the Requisite Consenting Superpriority Lenders and the Company.
<b>Covenants</b>	Purchaser and Sellers will be subject to customary covenants, including, with respect to conduct of business prior to the closing, cooperation, access, notification, efforts to obtain Regulatory Approvals (as defined below) and to obtain the transfer of permits, the replacement of associated bonding and post-closing operation of the mines by Purchaser during the pendency of the permit transfers, and the satisfaction of applicable closing conditions.
<b>Tax Cooperation</b>	Sellers and Purchaser shall cooperate in good faith to structure the Sale and related transactions in a manner that is tax efficient for both Purchaser and Sellers.
<b>Treatment of Employees</b>	Prior to the closing date, Purchaser shall set initial terms and conditions of employment, including, wages, benefits, job duties and responsibilities and work assignments for Purchaser Employees. Purchaser shall determine, in its sole discretion, which Business Employees to offer employment after the closing. Only Business Employees who are offered and then accept such offer of employment with Purchaser based on the initial terms and conditions set by Purchaser will become Purchaser Employees after the closing. For the avoidance of doubt, the terms and conditions of employment for any employees covered by a CBA assumed by Purchaser (if any) shall be governed by such CBA until its expiration, modification or termination in accordance with its terms or applicable law. To the extent practicable, the Purchaser shall provide the Company with sufficient advance notice to allow the Company to comply with any WARN Act notice obligations in the event that the Purchaser to its knowledge fails to offer employment to a sufficient number of Business Employees or offers terms to the Purchaser Employees that, in either case, would reasonably be expected to constitute a constructive discharge under the WARN Act. Notwithstanding the foregoing, nothing herein will, after the closing date, impose on Purchaser any obligation to retain any Purchaser Employee.
<b>Regulatory Approvals</b>	Regulatory approvals may be required in connection with the Sale, including to the extent applicable, under the Hart–Scott–Rodino Antitrust Improvements Act of 1976 (the “ <u>HSR Act</u> ”), and in respect of the transfer of mining permits, which shall be set forth on a schedule to the Purchase Agreement (all such required regulatory approvals, the “ <u>Regulatory Approvals</u> ”). Purchaser and Sellers shall use reasonable best efforts to obtain the Regulatory Approvals.
<b>Closing Conditions</b>	The Purchase Agreement will contain conditions to the obligation of Purchaser and the Company to consummate the Sale that are acceptable to the Requisite Consenting Superpriority Lenders and the Company, including the following:

	<ul style="list-style-type: none"><li>• Entry of a Confirmation Order in form and substance, including with respect to all findings of fact and conclusions of law, reasonably acceptable to the Company and Purchaser and such Confirmation Order not being subject to any stay or any appeal;</li><li>• Each of the conditions to the effective date of the Plan of Reorganization shall have been satisfied or waived;</li><li>• No injunctions or final order preventing the consummation of the Sale; and</li><li>• The expiry or early termination of the waiting period under the HSR Act (if applicable) and the receipt of all other Regulatory Approvals set forth on a mutually agreed schedule to the Purchase Agreement.</li></ul> <p>To the extent that any matters described in this term sheet require the agreement of Purchaser and Sellers, but such matters are not agreed at the time of signing a definitive Purchase Agreement, such matters will need to be mutually agreed as a condition to closing the transaction.</p> <p>The Purchase Agreement will contain conditions to the obligation of Purchaser to consummate the Sale that are acceptable to the Requisite Consenting Superpriority Lenders and the Company, including the following:</p> <ul style="list-style-type: none"><li>• (x) The objection deadline shall have passed for all counterparties to Assumed Contracts to object to assignment and assumption by Purchaser, including with respect to the cure costs contained in the notices sent to such counterparties and set forth in the Purchase Agreement (provided that Purchaser shall not be obligated to assume any Assumed Contracts if the Cure Costs associated therewith are above the amounts agreed between Purchaser and Seller and such contracts will become rejected contracts under the Plan) and (y) all Assumed Contracts will have been assigned to, and assumed by, Purchaser or, to the extent required, will have been novated to Purchaser;</li><li>• The Bankruptcy Court shall have determined and the Plan and Confirmation Order shall state that the Purchased Assets are being sold free and clear of all liabilities not expressly assumed by the Purchaser under the Purchase Agreement, including the successor clause in the CBAs, unless the parties to the CBAs agree to assume the successor clause in the CBAs, or the Bankruptcy Court grants a motion filed by the applicable Seller pursuant to 1113 of the Bankruptcy Code authorizing the applicable Seller to reject the CBAs;</li><li>• Sellers' fundamental representations and warranties in the Purchase Agreement will be true and correct in all aspects. All other representations and warranties of Sellers shall be true and correct in all respects (without giving any effect to any materially or material adverse effect qualifiers therein), except as would not, individually or in the aggregate, reasonably be expected to have a</li></ul>
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	<p>material adverse effect on the Purchased Assets or the Business;</p> <ul style="list-style-type: none"><li>• The RSA shall not have been terminated with respect to any party thereto;</li><li>• The Plan confirmed by the Confirmation Order, including the treatment of the Superpriority Lenders' claims thereunder, shall be in substantially the same form and substance as set forth on an exhibit to the Purchase Agreement, as may be amended, modified or supplemented from time to time in accordance with the RSA;</li><li>• Since the execution of the Purchase Agreement, no material adverse effect on the Purchased Assets or the Business shall have occurred;</li><li>• No facts or circumstances exist that have caused or are reasonably expected to cause any of the Purchased Assets to be "permit blocked" by reason of listing on the Applicant Violator System;</li><li>• Company's compliance in all material respects with its covenants; and</li><li>• The Wind-Down Amount, Adjusted Wind-Down Amount and the amount of the Funded Liabilities shall have been agreed in amounts acceptable to Purchaser.</li></ul> <p>The Purchase Agreement will contain customary conditions to the obligations of the Company to consummate the Sale that are acceptable to the Requisite Consenting Superpriority Lenders and the Company, including the following (and other conditions to be mutually agreed in the Purchase Agreement):</p> <ul style="list-style-type: none"><li>• Purchaser's fundamental representations and warranties in the Purchase Agreement will be true and correct in all respects. All other representations and warranties of Purchaser shall be true and correct in all respects (without giving any effect to any materiality or material adverse effect qualifiers therein), except as would not, individually or in the aggregate, reasonably be expected to have a material and adverse effect on Purchaser's ability to consummate the transactions contemplated by the Purchase Agreement;</li><li>• Purchaser's compliance in all material respects with its covenants;</li><li>• Upon consummation of the Sale, the Sellers will have unrestricted cash in an amount sufficient to satisfy the Adjusted Wind-Down Amount;</li><li>• Purchaser shall have the financial ability to comply with sections 365 and 1123 of the Bankruptcy Code, including providing adequate assurance of (x) future performance under all contracts to be assumed and (y) satisfaction of all Assumed Liabilities; and</li><li>• The Cure Costs shall have been paid (or otherwise reserved) in accordance with an order of the Bankruptcy Court.</li></ul>
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<b>Termination</b>	<p>The Purchase Agreement will contain termination provisions acceptable to the Requisite Consenting Superpriority Lenders, including the following:</p> <p>(i) by mutual agreement of the Company and Purchaser;</p> <p>(ii) by written election of Purchaser:</p> <ol style="list-style-type: none"><li>(1) upon a breach by Sellers of any representation, warranty, covenant or agreement in the Purchase Agreement or RSA, which breach would cause any of Purchaser's conditions to the closing not to be satisfied; <u>provided</u> that Purchaser is not then in material breach and such breach has not been cured within fifteen (15) business days;</li><li>(2) upon the Company entering into a definitive agreement with respect to a non de minimis portion of the Purchased Assets (pursuant to the Bidding Procedures Order);</li><li>(3) upon the exercise of the lenders' rights with respect to any Event of Default under the DIP Term Credit Agreement that is not waived or cured in accordance with the DIP Term Credit Agreement (as described in the DIP Term Credit Agreement);</li><li>(4) upon the dismissal or conversion of any of the Chapter 11 Cases;</li><li>(5) upon the appointment of a trustee or examiner with expanded powers; or</li><li>(6) upon a termination of the RSA for a failure to meet Milestones.</li></ol> <p>(iii) by written election of the Company</p> <ol style="list-style-type: none"><li>(1) upon a breach by Purchaser of any representation, warranty, covenant or agreement in the Purchase Agreement or RSA, which breach would cause any of the Company's conditions to the closing not to be satisfied; <u>provided</u> that the Company is not then in material breach and such breach has not been cured within fifteen (15) business days;</li></ol> <p>(iv) by written election of either the Company or Purchaser:</p> <ol style="list-style-type: none"><li>(1) if the closing does not occur on or prior to an agreed upon date, provided that the terminating party is not in breach of any representation, warranty, covenant or other agreement in the Purchase Agreement so as to cause the conditions to closing not to be satisfied;</li><li>(2) if, at the end of the Auction (as such term shall be defined in the Bidding Procedures Order), Purchaser is not determined by Sellers in accordance with the Bidding Procedures Order to be the Successful Bidder (as such term shall be defined in the Bidding Procedures Order) or the Backup Best Bidder (as such term shall be defined in the Bidding Procedures Order),</li></ol>
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	<p>and, if Purchaser is the Backup Best Bidder, upon closing a sale transaction with the Successful Bidder;</p> <p>(3) if a court of competent jurisdiction or other governmental authority has issued an order or taken any other action permanently restraining, enjoining or otherwise prohibiting the consummation of the closing under the Purchase Agreement and such order or action has become final and non-appealable; or</p> <p>(4) upon permanent denial of any required regulatory approval, the receipt of which is a closing condition.</p>
<b>Documentation</b>	<p>The transactions contemplated by this Term Sheet will be documented in a Purchase Agreement, which will be agreed to before the hearing of the Bankruptcy Court regarding the entry of the Bidding Procedures Order. The Sale will be consummated pursuant to a chapter 11 plan.</p>
<b>Overbid Process</b>	<p>The Sale shall be subject to an overbid process administered pursuant to the Bidding Procedures, pursuant to which the Company will select the highest or otherwise best bid for the Purchased Assets, which Bidding Procedures shall include the following dates (or such other dates as agreed to by the Company and the Requisite Consenting Superpriority Lenders):</p> <ul style="list-style-type: none"> <li>• Deadline for entry of Bidding Procedures: January 10, 2020</li> <li>• Deadline for Non-Binding Initial Indications of Interest: January 21, 2020</li> <li>• Final Bid Deadline for Binding Bids (the “<u>Bid Deadline</u>”): March 2, 2020</li> <li>• Auction (if any): March 12, 2020</li> </ul> <p>Pursuant to the Bidding Procedures, other bidders will be permitted to bid on some or all of the Purchased Assets.</p>
<b>Fiduciary Out</b>	<p>The Company reserves the right to act as it may reasonably determine to be in the best interest of its estates and in fulfilling its fiduciary duties, including by terminating the Purchase Agreement to pursue an alternative transaction but only to the extent consistent with the RSA, the Bidding Procedures Order and the Purchase Agreement.</p>

**Exhibit 2**

**Bidding Procedures**



agreement upon the receipt of a Successful Bid (as defined herein) that the Debtors have determined in their business judgment is the best or highest bid in accordance with these Bidding Procedures. In the event that one or more Qualified Bids (as defined herein) are designated as Successful Bids and contemplate the sale of less than all or substantially all of the Assets, then the sales contemplated by such Successful Bids may be implemented separate and apart from a chapter 11 plan, *provided, however*, that the liens and other interests in any Assets sold shall attach to the proceeds from such sale or sales, and the disposition of such proceeds and any remaining Assets shall be subject to a chapter 11 plan or any otherwise applicable orders of the Bankruptcy Court.

The Debtors' proposed chapter 11 plan [Docket No. 322] (as may be modified, amended, or supplemented from time to time, the "Plan") currently contemplates that the Debtors and the Successful Bidder or Successful Bidders (as defined herein) will consummate the Sale through the Plan, or, if there is no third party Successful Bidder or Successful Bidders, the Stalking Horse Bidder will be designated the Successful Bidder and will purchase the Assets in accordance with the Plan and the Stalking Horse Purchase Agreement.

Copies of the Bidding Procedures Order, the Plan, or any other documents in the Debtors' chapter 11 cases are available upon request to **Prime Clerk, LLC**, by calling (877) 422-5170 (Domestic) or (917) 947-2680 (International), or by visiting <https://cases.primeclerk.com/MurrayEnergy>.

#### **A. Potential Bidder**

For purposes of the Bidding Procedures, a "Potential Bidder" shall refer to any person or entity interested in submitting a bid.

#### **B. Due Diligence.**

##### **(i) Access to Due Diligence.**

Any Potential Bidder that executes a confidentiality agreement on customary terms that are reasonably acceptable to the Debtors (a "Confidentiality Agreement")<sup>2</sup> and provides sufficient evidence, as reasonably determined by the Debtors in consultation with the Consultation Parties, that the Potential Bidder intends to obtain due diligence and participate in the sale process for a bona fide purpose consistent with these Bidding Procedures (any such Potential Bidder being referred to as an "Acceptable Bidder") will be eligible to receive due diligence materials and access to certain non-public information regarding the Assets. The Debtors will provide to each Acceptable Bidder reasonable due diligence information as requested by such Acceptable Bidder in writing, as soon as reasonably practicable after such request. The Debtors will post substantially

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<sup>2</sup> Potential Bidders may obtain a copy of a Confidentiality Agreement by contacting the Debtors' advisors listed below. No Confidentiality Agreement entered into after entry of the Bidding Procedures Order shall contain any restriction or limitation on an Acceptable Bidder's ability to purchase any debt issued by the Debtors, unless the Debtors, in their reasonable business judgment and in consultation with the Ad Hoc Group of Superpriority Lenders, determine that the inclusion of such restriction or limitation would further the goal of attaining the highest or otherwise best offer for the Assets.

all written due diligence provided to any Acceptable Bidder to the Debtors' electronic data room (the "Data Room"). The Debtors may restrict or limit access of an Acceptable Bidder to the Data Room if the Debtors determine, based on their reasonable business judgment and in consultation with the Consultation Parties, that certain information in the Data Room is sensitive, proprietary, or otherwise not appropriate for disclosure to such Acceptable Bidder.

The initial due diligence period will end on the Final Bid Deadline (as defined herein). Following the Final Bid Deadline, the Debtors may, in their reasonable discretion and in consultation with the Consultation Parties,<sup>3</sup> furnish additional non-public information to a Qualified Bidder or Qualified Bidders that submitted a Qualified Bid (each as defined herein).

In connection with the provision of due diligence information to Acceptable Bidders, the Debtors will not furnish any confidential information relating to the Debtors, the Debtors' Assets or liabilities, or the Sale to any person except an Acceptable Bidder or such Acceptable Bidder's duly-authorized representatives, in each case, to the extent provided in the applicable Confidentiality Agreement.

The Debtors and their financial advisors will coordinate all reasonable requests for additional information and due diligence access from Acceptable Bidders; *provided* that the Debtors may decline to provide such information to Acceptable Bidders who, in the Debtors' reasonable business judgment, in consultation with the Consultation Parties, have not established that such Acceptable Bidders intend in good faith to, or have the capacity to, consummate their Bid. If the Debtors deny access or information to an Acceptable Bidder, the Debtors shall inform the Consultation Parties. No conditions relating to the completion of due diligence will be permitted to exist after the Final Bid Deadline.

The Debtors also reserve the right to withhold any diligence materials from an Acceptable Bidder who the Debtors reasonably determine in consultation with the Consultation Parties is a competitor of the Debtors or is affiliated with any competitor of the Debtors. Neither the Debtors nor their representatives will be obligated to furnish information of any kind whatsoever to any person that is not determined to be an Acceptable Bidder. The Debtors will make any diligence information available to the Stalking Horse Bidder if such diligence has been made available to any other Acceptable Bidder.

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<sup>3</sup> Each "Consultation Party," and collectively, the "Consultation Parties" means: (i) counsel to the Ad Hoc Group of Superpriority Lenders, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY 10017, Attn: Damian S. Schaible (damian.schaible@davispolk.com) and Adam L. Shpeen (adam.shpeen@davispolk.com); (ii) financial advisor to the Ad Hoc Group of Superpriority Lenders, Houlihan Lokey, 245 Park Avenue, 20th Floor, New York, NY, 10167, Attn: Eric Siegert (esiegert@HL.com), Fredrick Vescio (fvescio@HL.com) and Daniel Tobin (dtobin@HL.com); (iii) proposed counsel to the Official Committee of Unsecured Creditors (the "UCC"), Morrison & Foerster, LLP, 250 West 55th Street, New York, NY 10019, Attn: Lorenzo Marinuzzi (lmarinuzzi@mof.com), Jennifer Marines (jmarines@mof.com), Todd Goren (tgoren@mof.com), Erica Richards (erichards@mof.com), and Benjamin Butterfield (bbutterfield@mof.com); (iv) proposed financial advisor to the UCC, Moelis & Company, 399 Park Avenue, New York, NY 10022, Attn: William Q. Derrough (william.derrough@moelis.com) and Jared Dermont (jared.dermont@moelis.com); and (v) proposed restructuring advisor to the UCC, AlixPartners LP, 909 Third Avenue, New York, NY 10022, Attn: Kevin Nystrom (knystrom@alixpartners.com) and David MacGreevey (dmacgreevey@alixpartners.com).

Each Acceptable Bidder will be deemed to acknowledge and represent that it: (a) either directly or through its advisors has had an opportunity to conduct any and all due diligence regarding the Debtors' Assets and liabilities prior to making any Qualified Bid; (b) has relied solely upon its own or its advisors' independent review, investigation, and/or inspection of any documents and/or the Assets and liabilities in making any Qualified Bid; and (c) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law, or otherwise regarding the Debtors' Assets or liabilities, or the completeness of any information provided in connection therewith, except as expressly stated in these Bidding Procedures or the Stalking Horse Purchase Agreement. Neither the Debtors nor any of their employees, officers, directors, affiliates, subsidiaries, representatives, agents, advisors, or professionals are responsible for, and will bear no liability with respect to, any information obtained by Acceptable Bidders in connection with the Sale.

**The Debtors have designated Evercore Group L.L.C., 55 E. 52nd Street, New York, NY 10055, Attn: John Startin (john.startin@evercore.com), Andrew Frame (andrew.frame@evercore.com), and Pavel Te (pavel.te@evercore.com), to coordinate all reasonable requests for additional information and due diligence access.**

(ii) **No Communications Among Acceptable Bidders.**

There must be no communications regarding the Debtors' sale process between and amongst Acceptable Bidders (including, for the avoidance of doubt, the Stalking Horse Bidder), or between Acceptable Bidders and the Consultation Parties, unless the Debtors have previously authorized such communication in writing; *provided* that nothing in this paragraph or any Confidentiality Agreement will preclude the Stalking Horse Bidder from communicating with the Debtors, the Consultation Parties, or the UCC. The Debtors reserve the right, in their reasonable business judgment, in consultation with the Consultation Parties, to disqualify any Acceptable Bidders that have communications between and amongst themselves. The Debtors further reserve their right, in their reasonable business judgment, in consultation with the disinterested Consultation Parties, to disqualify any Acceptable Bidders that have communications with a Consultation Party, and to strip any Consultation Party that violates this provision (except as otherwise provided in this paragraph) of its consultation rights hereunder; *provided* that the Debtors shall provide such Consultation Party with two days' notice that the Debtors are exercising their rights to strip the Consultation Party of their consultation rights, and such Consultation Party shall have the right to seek an emergency hearing before the Court to contest the Debtors' decision to strip such Consultation Party of their consultation rights.

**C. Preliminary Bid Deadline.**

Potential Bidders are encouraged, on or before January 21, 2020, at 4:00 p.m., prevailing Eastern Time (the "**Preliminary Bid Deadline**"), to deliver a preliminary non-binding indication of interest (each, a "**Non-Binding Indication of Interest**") to each of (i) proposed counsel to the Debtors, Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654, Attn: Ross M. Kwasteniet, P.C. (rkwasteniet@kirkland.com) and Joseph M. Graham (joe.graham@kirkland.com) and 601 Lexington Avenue, New York, New York 10022, Attn: Nicole L. Greenblatt, P.C. (ngreenblatt@kirkland.com) and Alexander Nicas (alexander.nicas@kirkland.com) and (ii) proposed financial advisor and investment banker to the

Debtors, Evercore Group L.L.C., 55 E. 52nd Street, New York, NY 10055, Attn: John Startin (john.startin@evercore.com), Andrew Frame (andrew.frame@evercore.com), and Pavel Te (pavel.te@evercore.com), which Non-Binding Indication of Interest should include the following documents (the “Indication of Interest Documents”):

- (i) a written disclosure of the identity of each entity that may be bidding for the Assets or otherwise participating in connection with such Bid;
- (ii) a non-binding description of the Assets and any liabilities (including, but not limited to, liabilities related to any prepetition collective bargaining agreements, pension obligations, and other post-employment benefits) such Potential Bidder may be interested in purchasing or assuming;
- (iii) a non-binding description of the consideration (e.g., cash, assumption of liabilities, or issuance of debt) the Potential Bidder may offer in connection with such Bid; and
- (iv) preliminary evidence by the Potential Bidder of its financial capacity to close a proposed transaction, which may (but need not) include current unaudited or verified financial statements of, or verified financial commitments obtained by, the Potential Bidder (or, if the Potential Bidder is an entity formed for the purpose of acquiring the property to be sold, the party that will bear liability for a breach by the Potential Bidder), the adequacy of which will be assessed by the Debtors and their advisors, in their reasonable discretion, in consultation with the Consultation Parties.

Submitting a Non-Binding Indication of Interest does not obligate the Potential Bidder to consummate a transaction, submit a binding Bid, or participate in the bidding process. It also does not exempt such Potential Bidder from having to submit a Qualified Bid by the Bid Deadline (as defined below) or comply with these Bidding Procedures to participate in any subsequent Auction, all as described below. For the avoidance of doubt, a party that does not submit a Non-Binding Indication of Interest is not precluded from submitting a Qualified Bid by the Bid Deadline.

The Debtors shall provide copies of any Indication of Interest Documents received from Potential Bidders as soon as practicable, but no later than the earlier of one business day or two calendar days after receipt thereof, to each of the Consultation Parties.

#### **D. Bid Requirements.**

To be eligible to participate in the Auction, a Potential Bidder must deliver to the Debtors and their advisors, a written, irrevocable offer that must be determined by the Debtors, in their reasonable business judgment and in consultation with the Consultation Parties, to satisfy each of the following conditions (collectively, the “Bid Requirements”):

- (i) **Purpose.** Each Potential Bidder must state that the Bid includes an offer by the Potential Bidder to purchase some or all of the Assets, and identify the Assets with reasonable specificity and the particular liabilities, if any, the Potential Bidder seeks

to assume. For the avoidance of doubt, a Qualified Bid may include a Bid for less than all or substantially all of the Debtors' liabilities.

- (ii) **Purchase Price.** Each Bid must clearly set forth the purchase price to be paid for the Assets (the "Purchase Price") and must (a) indicate the source of cash consideration, including funding commitments, and confirm that such consideration is not subject to any contingencies, (b) indicate the allocation of the Purchase Price among the Assets being purchased, and (c) identify separately the cash and non-cash components of the Purchase Price. The Bid should include a detailed sources and uses schedule.
- (iii) **Minimum Bid.** The value of each Bid, as determined by the Debtors in their business judgment, must exceed, with respect to Bids that contemplate purchasing all or substantially all Assets, (a) the aggregate sum of the aggregate consideration contemplated by the Stalking Horse Bid,<sup>4</sup> and (b) the minimum Bid increment of \$1 million (or such other amount as the Debtors may determine in consultation with the Consultation Parties, which amount may be less than \$1 million, including with respect to a Bid for less than all Assets). Any Bids that contemplate purchasing the Assets must provide cash consideration sufficient to pay in full all accrued but unpaid principal, interest, fees, expenses, and other costs under or on account of the DIP Facility. The minimum Bid increment must be in the form of cash or cash equivalents and/or the assumption of liabilities. The Debtors and their advisors, in consultation with the Consultation Parties, will determine, in their reasonable business judgment, the value of any assumed liabilities that differ from those included in the Stalking Horse Bid.

Each Bid seeking to acquire an individual asset or combination of assets that are less than all of the Debtors' Assets must have a value that in the Debtors' reasonable business judgment, after consultation with the Consultation Parties, either independently or in conjunction with one or more other Bids, is in excess of the value attributable to such individual asset or combination of assets as set forth in the Stalking Horse Bid.

- (iv) **Bid Deposit.** Each Bid must be accompanied by a cash deposit equal to ten percent of the aggregate value of the cash and non-cash consideration of the Bid (the "Good Faith Deposit"), which will be held in an escrow account established by the Debtors in consultation with the Consultation Parties pursuant to a customary and reasonable escrow agreement, by wire transfer or certified or cashier's check. To the extent a Qualified Bid is modified before, during, or after the Auction in any manner that increases the purchase price contemplated by such Qualified Bid, the Debtors reserve the right, in consultation with the Consultation Parties, to require that such Qualified Bidder increase its Good Faith Deposit so that it equals ten percent of the increased Purchase Price.

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<sup>4</sup> For the avoidance of doubt, any debt that is credit bid in the Stalking Horse Bid shall be valued at its full principal amount for purposes of determining the consideration contemplated by the Stalking Horse Bid.

- (v) **Committed Financing.** If a Bid is not accompanied by evidence of the Potential Bidder's capacity to consummate the Sale transaction set forth in its Bid with cash on hand, each Bid must include committed financing documented to the Debtors' satisfaction, in consultation with the Consultation Parties, that demonstrates that the Potential Bidder has received sufficient debt and/or equity funding commitments to satisfy the Potential Bidder's Purchase Price and other obligations (including, but not limited to, such mining permits, reclamation obligations, and surety bond obligations required under applicable nonbankruptcy law) under its Bid. Such funding commitments or other financing must be unconditional and must not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, and shall have covenants and conditions acceptable to the Debtors in their sole discretion.
- (vi) **Good Faith Offer.** Each Bid must constitute a good faith, bona fide offer to purchase the Assets set forth in such Bid.
- (vii) **Marked Agreement.** Each Bid must be accompanied by clean and duly executed transaction documents including, at a minimum, a draft purchase agreement, the form of which will be provided to any Potential Bidder prior to the Final Bid Deadline, including the exhibits and schedules related thereto, and any related material documents integral to such Bid pursuant to which the Potential Bidder proposes to effectuate the Sale, along with redlines of such agreement marked to reflect any amendments and modifications from the form purchase agreement provided, which amendments and modifications may not be materially more burdensome than the Stalking Horse Purchase Agreement or otherwise inconsistent with these Bidding Procedures. The Debtors, in their reasonable business judgment and in consultation with the Consultation Parties, will determine whether any such amendments and modifications are materially more burdensome.
- (viii) **Contracts and Leases.** Each Bid must identify with particularity each and every executory contract and unexpired lease, the assumption and assignment of which is a condition to closing a Sale; *provided* that to the extent the Debtors identify any additional executory contracts or unexpired leases after the Bid is submitted, the Bid may allow for the Potential Bidder to add such executory contracts and unexpired leases to the list of contracts to be assumed and assigned any time from and after the Bid is submitted.
- (ix) **No Contingencies.** A Bid must contain a clear statement that it is not conditioned on any contingency, including, among others, on obtaining any of the following (a) financing, (b) shareholder, board of directors, or other approval, and/or (c) the outcome or completion of a due diligence review by the Potential Bidder.
- (x) **Binding and Irrevocable.** A Potential Bidder's Bid is irrevocable unless and until the Debtors accept a higher Bid and such Potential Bidder is not selected as the Back-Up Bidder (as defined herein). In the event a Bid is chosen as the Back-Up Bid (as defined below), it must remain irrevocable until the Debtors and the Successful Bidder consummate the Sale.

- (xi) **Joint Bids**. The Debtors will be authorized to approve joint Bids in their reasonable discretion, in consultation with the Consultation Parties, on a case-by-case basis.
- (xii) **Adequate Assurance Information**. Each Bid must be accompanied by sufficient and adequate financial and other information (the “Adequate Assurance Information”) to demonstrate, to the reasonable satisfaction of the Debtors, in consultation with the Consultation Parties, that such Potential Bidder (a) has the financial wherewithal and ability to consummate the acquisition of the Assets (the “Closing”), and (b) can provide adequate assurance of future performance in satisfaction of the requirements under section 365(f)(2)(B) of the Bankruptcy Code, and the Potential Bidder’s willingness to perform under any contracts that are assumed and assigned to such party. The Bid must also identify a contact person that parties may contact to obtain additional Adequate Assurance Information.
- (xiii) **Identity & Corporate Authority**. Each Bid must fully disclose the identity of each entity that will be participating in connection with such Bid (including any equity owners or sponsors, if the purchaser is an entity formed for the purpose of consummating the acquisition of the Assets), and the complete terms of any such participation, along with sufficient evidence that the Potential Bidder is legally empowered, by power of attorney or otherwise, to complete the transactions on the terms contemplated by the parties. A Bid must also fully disclose any connections or agreements with the Debtors, any known, potential, prospective bidder, or Qualified Bidder (as defined herein), or any officer, director, or equity security holder of the Debtors.
- (xiv) **Authorization**. Each Bid must contain evidence that the Potential Bidder has obtained authorization or approval from its board of directors (or a comparable governing body reasonably acceptable to the Debtors) with respect to the submission of its Bid and the consummation of the transactions contemplated in such Bid.
- (xv) **No Fees**. Each Potential Bidder presenting a Bid or Bids will bear its own costs and expenses (including legal fees) in connection with the proposed transaction. By submitting its Bid, each Potential Bidder agrees to waive any assertion or request for reimbursement on any basis, including under section 503(b) of the Bankruptcy Code. Each Bid must expressly state that the Bid does not entitle the Potential Bidder to any break-up fee, termination fee, expense reimbursement, or similar type of payment or reimbursement.
- (xvi) **Adherence to Bidding Procedures**. By submitting its Bid, each Potential Bidder is agreeing to (a) abide by and honor the terms of these Bidding Procedures and agrees not to submit a Bid or seek to reopen the Auction after conclusion of the Auction and (b) serve as Back-Up Bidder, if its Bid is selected as the next highest or next best bid after the Successful Bid with respect to the applicable assets.

- (xvii) **Regulatory Approvals and Covenants.** A Bid must set forth each regulatory and third-party approval required for the Potential Bidder to consummate the applicable Sale, if any, and the time period within which the Potential Bidder expects to receive such governmental, licensing, regulatory, or third-party approvals (and in the case that receipt of any such approval is expected to take more than thirty days following execution and delivery of the asset purchase agreement, those actions the Potential Bidder will take to ensure receipt of such approvals as promptly as possible).
- (xviii) **Employee Obligations.** Each Bid must expressly propose the treatment of the Debtors' prepetition collective bargaining agreements (the "CBAs"), pension obligations, and other post-employment benefits (collectively, the "Employee Obligations").
- (xix) **Transfer of Mining Permits/Assumption of Reclamation Obligations.** Each Bid must (i) provide that the Potential Bidder will (a) take transfer of or obtain permits for the mining operations to be acquired, (b) assume all associated reclamation obligations with respect to the mines subject to the Bid to the extent required under applicable nonbankruptcy law, and (c) obtain assignment of or replace the reclamation surety bonds associated with such permits, and (ii) provide evidence of (a) the Potential Bidder's ability to satisfy the conditions set forth in clause (i) of this paragraph (including verification that the Potential Bidder is not, and will not be as of the time of the transfer, "permit blocked" under the federal Surface Mining Control and Reclamation Act by application of the federal Applicant Violator System), and (b) the Potential Bidder's financial resources necessary to obtain assignment of or replace the reclamation surety bonds associated with such permits, which evidence may include a letter from a surety company confirming that the Potential Bidder is a "qualified buyer" (as such term is used in the surety industry).
- (xx) **As-Is, Where-Is.** Each Bid must include a written acknowledgement and representation that the Potential Bidder (a) has had an opportunity to conduct any and all due diligence regarding the Debtors' Assets and liabilities prior to making its Bid, (b) has relied solely upon its own or its advisors' independent review, investigation, and/or inspection of any documents and/or the Assets and liabilities in making its Bid, and (c) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law, or otherwise, regarding the Assets, liabilities, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Potential Bidder's proposed purchase and sale agreement for the Assets.
- (xxi) **Time Frame for Closing.** A Bid by a Potential Bidder must be reasonably likely (based on antitrust or other regulatory issues, experience, and other considerations) to be consummated, if selected as the Successful Bid (as defined herein), within a time frame reasonably acceptable to the Debtors in consultation with the Consultation Parties.

- (xxii) **Consent to Jurisdiction.** The Potential Bidder must submit to the jurisdiction of the Bankruptcy Court and waive any right to a jury trial in connection with any disputes relating to the Debtors' qualification of Bids, the Auction, the construction and enforcement of these Bidding Procedures, the Plan, the Sale documents, and the Closing, as applicable.
- (xxiii) **DIP Order.** All Bids must be in accordance with the terms and conditions of the DIP Order and the DIP Credit Agreement.

Bids fulfilling all of the preceding requirements, as determined by the Debtors and their advisors, in their reasonable business judgment and in consultation with the Consultation Parties, will be deemed to be "Qualified Bids," and those parties submitting Qualified Bids will be deemed to be "Qualified Bidders." All information disclosed by any Potential Bidder in connection with all of the preceding requirements will be made available by the Debtors to the Consultation Parties promptly upon the Debtors' receipt thereof but in any event no later than the earlier of one business day or two calendar days following the Debtors' receipt of such information; *provided* that any confidential financing and/or equity commitment documents received from a Potential Bidder shall only be shared with the Consultation Parties on a professional-eyes'-only basis. The Debtors reserve the right, in consultation with the Consultation Parties, to work with any Potential Bidder in advance of the Auction to cure any deficiencies in a Bid that is not initially deemed to be a Qualified Bid. The Debtors may accept a single Qualified Bid or multiple Bids for non-overlapping material portions of the Debtors' Assets such that, if taken together in the aggregate, would otherwise meet the standards for a single Qualified Bid (in which event those multiple bidders will be treated as a single Qualified Bidder for purposes of the Auction; *provided* that the Debtors also reserve the right, in consultation with the Consultation Parties, to conduct more than one Auction with respect to non-overlapping material portions of the Debtors' Assets).

For the avoidance of doubt, the Stalking Horse Bidder will be deemed a Qualified Bidder by the Debtors in accordance with these Bidding Procedures, and the Stalking Horse Bid will be deemed a Qualified Bid, which qualify such Stalking Horse Bidder to participate in the Auction as a Qualified Bidder. If the Stalking Horse Bid is chosen as the Successful Bid, the rights and obligations of the Stalking Horse Bidder shall be as set forth in the Stalking Horse Purchase Agreement. If the Stalking Horse Bid is selected as the Back-Up Bid, it must remain irrevocable only for so long as is required under the Stalking Horse Purchase Agreement.

Within three days after the Final Bid Deadline, the Debtors and their advisors, in consultation with the Consultation Parties, will determine which Potential Bidders are Qualified Bidders and will notify the Potential Bidders whether Bids submitted constitute, alone or together with other Bids, Qualified Bids so as to enable such Qualified Bidders to bid at the Auction. Any Bid that is not deemed a Qualified Bid will not be considered by the Debtors.

**Qualified Bids must be received by each of the Debtors' advisors so as to be actually received no later than March 2, 2020, at 4:00 p.m., prevailing Eastern Time (the "Final Bid Deadline").**

**E. Evaluation of Qualified Bids.**

Prior to the Auction, the Debtors and their advisors will evaluate Qualified Bids and identify the Qualified Bid that is, in the Debtors' reasonable business judgment, in consultation with the Consultation Parties, the highest or otherwise best Bid (the "Starting Bid"). For the avoidance of doubt, the Debtors may select more than one Qualified Bid to collectively serve as the Starting Bid if each such Qualified Bid contemplates the purchase of different Assets. In making such determination, the Debtors will take into account, among other things, (i) the amount of the Qualified Bid, (ii) the impact on customers, vendors, and employees, (iii) the extent to which a Qualified Bid provides for the assumption of reclamation obligations, (iv) the certainty of a Qualified Bid leading to a confirmed plan, and (v) the execution risk attendant to any submitted Bids. Not later than two business days prior to the date of the Auction, the Debtors will (1) notify the UCC and the Stalking Horse Bidder as to which Qualified Bid is the Starting Bid and (2) distribute copies of the Starting Bid to each Qualified Bidder who has submitted a Qualified Bid and the Consultation Parties.

If any Bid is determined by the Debtors not to be a Qualified Bid, the Debtors will refund such Potential Bidder's Good Faith Deposit and all accumulated interest thereon on or within ten business days, or as soon as reasonably practicable thereafter, after the Final Bid Deadline.

**F. No Qualified Bids.**

If no Qualified Bids, other than the Stalking Horse Bid, are received by the Final Bid Deadline, then the Auction will not occur, the Stalking Horse Bidder will be deemed the Successful Bidder, and the Debtors will pursue entry of an order by the Bankruptcy Court approving the Stalking Horse Purchase Agreement and authorizing the Sale to the Stalking Horse Bidder at the Sale Hearing (as defined herein).

**G. Auction.**

If one or more Qualified Bids is received by the Final Bid Deadline, the Debtors will conduct the Auction with respect to the Debtors' Assets. For the avoidance of doubt, the Debtors may also conduct more than one Auction with respect to non-overlapping material portions of the Debtors' Assets. The Auction will commence on **March 12, 2020, at 10 a.m., prevailing Eastern Time**, at the offices of Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, or such later time or other place as the Debtors will timely notify the Stalking Horse Bidder and all other Qualified Bidders, in consultation with the Consultation Parties, subject to the terms of the DIP Credit Agreement.

The Auction will be conducted in accordance with the following procedures (the "Auction Procedures"):

- (i) the Auction will be conducted openly;
- (ii) only the Qualified Bidders, including the Stalking Horse Bidder, will be entitled to bid at the Auction;

- (iii) the Qualified Bidders, including the Stalking Horse Bidder, must appear in person or through duly-authorized representatives at the Auction;
- (iv) only such authorized representatives of each of the Qualified Bidders (including the Stalking Horse Bidder), the Ad Hoc Group of Superpriority Lenders, the Debtors, their respective advisors, and the UCC advisors will be permitted to attend the Auction;
- (v) bidding at the Auction will begin at the Starting Bid;
- (vi) subsequent Bids at the Auction, including any Bids by any Stalking Horse Bidder, must be made in minimum increments of \$1 million (or such other amount as the Debtors may determine in consultation with the UCC advisors or, if the Stalking Horse Bidder is not participating in the Auction with respect to the Asset or Assets subject to such Auction or is no longer bidding on such Asset or Assets, the Consultation Parties, which amount may be higher or lower than \$1 million) of additional value, if applicable, *provided* that the Stalking Horse Bidder may credit bid any remaining amounts of its secured claims in connection with a subsequent Bid;
- (vii) each Qualified Bidder will be informed of the terms of the previous Bids and the Debtors shall, during the course of the Auction, promptly inform each Qualified Bidder of which subsequent Bids reflect, in the Debtors' reasonable business judgment, and in consultation with the UCC advisors or, if the Stalking Horse Bidder is not participating in the Auction with respect to the Asset or Assets subject to such Auction or is no longer bidding on such Asset or Assets, the Consultation Parties, the highest or otherwise best bid(s) for the applicable Assets;
- (viii) the Auction will be transcribed to ensure an accurate recording of the bidding at the Auction;
- (ix) each Qualified Bidder will be required to confirm on the record of the Auction that it has not engaged in any collusion with respect to the bidding or the Sale;
- (x) the Auction will not close unless and until all Qualified Bidders have been given a reasonable opportunity to submit an overbid at the Auction to the then prevailing highest or otherwise best Bid, subject to the Debtors' right to require, in consultation with the UCC advisors or, if the Stalking Horse Bidder is not participating in the Auction with respect to the Asset or Assets subject to such Auction or is no longer bidding on such Asset or Assets, the Consultation Parties, last and final Bids to be submitted on a "blind" basis;
- (xi) the Debtors reserve the right, in their reasonable business judgment and in consultation with the UCC advisors or, if the Stalking Horse Bidder is not participating in the Auction with respect to the Asset or Assets subject to such Auction or is no longer bidding on such Asset or Assets, the Consultation Parties, subject to the terms of the DIP Credit Agreement, to adjourn the Auction one or more times to, among other things, (a) facilitate discussions between the Debtors

and Qualified Bidders, (b) allow Qualified Bidders to consider how they wish to proceed, and (c) provide Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in their reasonable business judgment and in consultation with the UCC advisors or, if the Stalking Horse Bidder is not participating in the Auction with respect to the Asset or Assets subject to such Auction or is no longer bidding on such Asset or Assets, the Consultation Parties, may require that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent debt and/or equity funding commitments to consummate the proposed transaction at the prevailing amount; and

- (xii) the Auction will be governed by such other Auction Procedures as may be announced by the Debtors and their advisors, after consultation with the UCC advisors or, if the Stalking Horse Bidder is not participating in the Auction with respect to the Asset or Assets subject to such Auction or is no longer bidding on such Asset or Assets, the Consultation Parties, from time to time on the record at the Auction; *provided* that such other Auction Procedures are (a) not inconsistent with the Bidding Procedures Order, the Bankruptcy Code, or any other order of the Bankruptcy Court, (b) disclosed orally or in writing to all Qualified Bidders, and (c) determined by the Debtors, in good faith and in consultation with the advisors to the Ad Hoc Group of Superpriority Lenders and the UCC (*provided, however*, that if the Stalking Horse Bidder is participating in the Auction with respect to the Asset or Assets, the Ad Hoc Group of Superpriority Lenders will not have such consultation rights), to further the goal of attaining the highest or otherwise best offer for the Assets.

To remain eligible to participate in the Auction for a particular Asset, in each round of bidding, (i) each Qualified Bidder must submit a Bid in such round of bidding that is a higher or otherwise better offer than the immediately preceding highest or otherwise best Bid submitted by a Qualified Bidder in such round of bidding, and (ii) to the extent a Qualified Bidder fails to submit a Bid in such round of bidding that is a higher or otherwise better offer than the immediately preceding highest or otherwise best Bid submitted by a Qualified Bidder in such round of bidding, as determined by the Debtors, in their reasonable business judgment and in consultation with the UCC advisors or, if the Stalking Horse Bidder is not participating in the Auction with respect to the Asset or Assets subject to such Auction or is no longer bidding on such Asset or Assets, the Consultation Parties, such Qualified Bidder shall be disqualified from continuing to participate in the Auction for such Asset.

For the avoidance of doubt, nothing in the Auction Procedures will prevent the Debtors from exercising their respective fiduciary duties under applicable law (as reasonably determined in good faith by the Debtors in consultation with their outside legal counsel).

#### **H. Acceptance of the Successful Bid or Successful Bids.**

Upon the conclusion of the Auction (if such Auction is conducted), the Debtors, in the exercise of their reasonable business judgment and in consultation with the UCC advisors or, if the Stalking Horse Bidder is not participating in the Auction with respect to the Asset or Assets subject to such Auction or is no longer bidding on such Asset or Assets, the Consultation Parties

(which consultation shall include, without limitation, a meaningful opportunity for the UCC advisors or the Consultation Parties, as the case may be, to respond to the Debtors' determination prior to any announcement of a Successful Bid), will identify the highest or otherwise best Qualified Bid or Qualified Bids for the Assets (each, a "Successful Bid," and each person or entity submitting a Successful Bid, a "Successful Bidder"), which will be determined by considering, among other things, (a) the type and amount of Assets sought to be purchased in the Bid or Bids and whether such Assets should or can be severed from other Assets (whether subject to competing Bids or otherwise), (b) the total expected consideration to be received by the Debtors, (c) the likelihood of the Qualified Bidder or Qualified Bidders' ability to close a transaction and the timing thereof (including any anticipated delays to Closing and the cost to the Debtors of such delays), (d) the expected net benefit to the estates, (e) the impact on customers, vendors, employees, including, but not limited to, any union, and retirees, (f) the proposed treatment of the Employee Obligations, (g) the certainty of the Debtors being able to confirm a plan (whether the Plan or some other plan), and (h) any other criteria as may be considered by the Debtors in their reasonable business judgment (including the consideration of any considerations raised by the Consultation Parties that the Debtors determine, in their reasonable business judgment, are pertinent to the decision of the highest or otherwise best Bid). For the avoidance of doubt, the Debtors may select more than one Qualified Bid to collectively serve as a Successful Bid if each such Qualified Bid contemplates the purchase of different Assets. The Successful Bidder or Successful Bidders and the Debtors must, as soon as commercially reasonably practicable, complete and sign all agreements, contracts, instruments, or other documents evidencing and containing the terms upon which such Successful Bid or Successful Bids were made.

The Debtors will present the results of the Auction to the Bankruptcy Court at the Sale Hearing, at which certain findings will be sought from the Bankruptcy Court regarding the Auction, including, among other things, that (a) the Auction was conducted, and the Successful Bidder or Successful Bidders were selected, in accordance with these Bidding Procedures, (b) the Auction was fair in substance and procedure, and (c) consummation of the Successful Bid or Successful Bids will provide the highest or otherwise best value for the Debtors' Assets and is in the best interests of the Debtors' estates.

If an Auction is held, the Debtors will be deemed to have accepted a Qualified Bid only when (a) such Qualified Bid is declared a Successful Bid at the Auction, and (b) definitive documentation has been executed in respect thereof. Such acceptance is conditioned upon approval by the Bankruptcy Court of the Successful Bid or Successful Bids and entry of an order approving such Successful Bid or Successful Bids (the "Sale Order"), which Sale Order may be the order confirming the Plan or such other chapter 11 plan as contemplated by the Successful Bid or Successful Bids, and in the case the Stalking Horse Bid is the Successful Bid, is anticipated to be the order confirming the Plan.

## **I. Sale Hearing.**

A hearing before the Bankruptcy Court to consider approval of the Successful Bid or Successful Bids (the "Sale Hearing"), pursuant to which the Debtors and the Successful Bidder or

Successful Bidders will consummate the Sale, will be held on [●], 2020, at [●].m.,<sup>5</sup> prevailing Eastern Time, before the Honorable John E. Hoffman, Jr., United States Bankruptcy Judge, United States Bankruptcy Court for the Southern District of Ohio, Courtroom A, 5th Floor, 170 North High Street, Columbus, Ohio 43215. The Sale Hearing may be the hearing to consider confirmation of the Plan or such other chapter 11 plan as contemplated by the Successful Bid or Successful Bids.

**The Sale Hearing may be continued to a later date by the Debtors, upon consultation with the Consultation Parties, by sending notice prior to, or making an announcement at, the Sale Hearing. No further notice of any such continuance will be required to be provided to any party.**

At the Sale Hearing, the Debtors will present the Successful Bid or Successful Bids to the Bankruptcy Court for approval.

**J. Designation of Back-Up Bidder or Back-Up Bidders.**

If for any reason the Successful Bidder or Successful Bidders fail to consummate the Qualified Bid or Qualified Bids within the time permitted after the entry of the Confirmation Order approving the Sale to the Successful Bidder or Successful Bidders, then the Qualified Bidder or Qualified Bidders with the next-highest or otherwise second-best Bid or Bids (each, a “Back-Up Bidder”), as determined by the Debtors after consultation with their advisors and the UCC advisors, at the conclusion of the Auction and announced at that time to all the Qualified Bidders participating therein, will automatically be deemed to have submitted the highest or otherwise best Bid or Bids (each, a “Back-Up Bid”), and the Debtors will be authorized, but not required, to consummate the transaction pursuant to the Back-Up Bid or Back-Up Bids as soon as commercially reasonably practicable without further order of the Bankruptcy Court upon at least 24 hours advance notice, which notice will be filed with the Bankruptcy Court. Upon designation of the Back-Up Bidder or Back-Up Bidders at the Auction, the Back-Up Bid or Back-Up Bids must remain open until the Closing of the Successful Bid or Successful Bids, as applicable.

**K. Return of Good Faith Deposit to Qualified Bidders that Submit Qualified Bids.**

The Good Faith Deposit of the Successful Bidder or Successful Bidders will, upon consummation of the Successful Bid or Successful Bids, become property of the Debtors’ estates and be credited to the portion of the Purchase Price. If the Successful Bidder or Successful Bidders (or Back-Up Bidder or Back-Up Bidders, if applicable) fails to consummate the Successful Bid or Successful Bids (or Back-Up Bid or Back-Up Bids, if applicable), then the Good Faith Deposit of such Successful Bidder or Successful Bidders (or Back-Up Bidder or Back-Up Bidders, if applicable) will be irrevocably forfeited to the Debtors and may be retained by the Debtors as liquidated damages, in addition to any and all rights, remedies, or causes of action that may be available to the Debtors. The Debtors will treat any forfeited Good Faith Deposit in accordance with the DIP Credit Agreement and DIP Order.

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<sup>5</sup> Date that is approximately 190 days from the Petition Date, subject to Court availability.

The Good Faith Deposit of any unsuccessful Qualified Bidders (except for the Back-Up Bidder or Back-Up Bidders and the Stalking Horse Bidder) will be returned within five business days after consummation of the Sale or upon the permanent withdrawal of the proposed Sale of the Debtors' Assets. The Good Faith Deposit of the Back-Up Bidder or Back-Up Bidders, if any, will be returned to such Back-Up Bidder or Back-Up Bidders no later than five business days after the Closing with the Successful Bidder or Successful Bidders for the Assets bid upon by such Back-Up Bidder or Back-Up Bidders.

Except as set forth in the first paragraph of this Section K, all deposits shall be held in escrow and at no time shall be deemed property of the Debtors' estates absent further order of the Bankruptcy Court.

**L. Reservation of Rights.**

The Debtors reserve their rights, with the consent of the advisors to the Ad Hoc Group of Superpriority Lenders, which consent shall not be unreasonably withheld, delayed, or conditioned (*provided, however*, any modifications to the Auction Procedures set forth in section G hereof shall be governed by section G.xii hereof, shall not require the consent of the Ad Hoc Group of Superpriority Lenders, and shall only require the Debtors to consult with Ad Hoc Group of Superpriority Lenders if the Stalking Horse Bidder is not participating in the Auction with respect to the Asset or Assets subject to such Auction), and in consultation with the UCC advisors, to modify these Bidding Procedures in good faith, including by setting procedures for an Auction or Auctions for individual Assets or sub-groups of the Assets, to further the goal of attaining the highest or otherwise best offer for the Assets, or impose, at or prior to the Auction, additional customary terms and conditions on the Sale of the Assets. The Debtors shall provide notice of any such modification to any Qualified Bidder, including the Stalking Horse Bidder.

All parties reserve their rights to seek Bankruptcy Court relief with regard to the Auction, the Bidding Procedures, and any related items (including, if necessary, to seek an extension of the Bid Deadline). All Consultation Parties will be permitted to seek relief from the Bankruptcy Court on an expedited basis if they disagree with any actions or decision made by the Debtors as part of these Bid Procedures. The rights of all Consultation Parties with respect to the outcome of the Auction are reserved.

For the avoidance of doubt and notwithstanding anything herein to the contrary, nothing in these Bidding Procedures shall, or shall be construed to, in any way amend, impair, prejudice, alter, or otherwise modify the terms of any DIP Document or the rights of the DIP Agent or any DIP Lender thereunder (each as defined in the DIP Order).

**M. Consent to Jurisdiction.**

All Qualified Bidders at the Auction will be deemed to have consented to the jurisdiction of the Bankruptcy Court and waived any right to a jury trial in connection with any disputes relating to the Sale, the Auction, the construction and enforcement of these Bidding Procedures, and/or the Indication of Interest Documents, as applicable, and consented to the entry of a final order or judgment in any way related to these Bidding Procedures, the bid process, the Auction, the Sale Hearing, or the construction and enforcement of any agreement or any other document

relating to a Sale if it is determined that the Bankruptcy Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the parties.

Any parties raising a dispute relating to these Bidding Procedures must request that such dispute be heard by the Bankruptcy Court on an expedited basis.

**N. Fiduciary Out.**

Nothing in these Bidding Procedures will require the board of directors, board of managers, or such similar governing body of a Debtor or non-debtor affiliate to take any action, or to refrain from taking any action, with respect to these Bidding Procedures, to the extent such board of directors, board of managers, or such similar governing body reasonably determines in good faith, in consultation with outside counsel, that taking such action, or refraining from taking such action, as applicable, is required to comply with applicable law or its fiduciary obligations under applicable law.

**O. Sale Is As Is/Where Is.**

The Assets sold pursuant to these Bidding Procedures will be conveyed at the Closing in their then present condition, “as is, with all faults, and without any warranty whatsoever, express or implied.”

\* \* \* \* \*

**Exhibit 3**

**Sale Notice**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

	)	
In re:	)	Chapter 11
	)	
MURRAY ENERGY HOLDINGS CO., <i>et al.</i> , <sup>1</sup>	)	Case No. 19-56885 (JEH)
	)	
	)	Judge John E. Hoffman, Jr.
	)	
Debtors.	)	(Jointly Administered)
	)	

**NOTICE OF BIDDING PROCEDURES,  
POTENTIAL AUCTION, AND SALE HEARING**

**PLEASE TAKE NOTICE** that the above-captioned debtors and debtors in possession (collectively, the “Debtors”)<sup>2</sup> each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), in the United States Bankruptcy Court for the Southern District of Ohio (the “Court”) on October 29, 2019.

**PLEASE TAKE FURTHER NOTICE** that on December 4, 2019, in connection with the proposed sale (the “Sale”) of all, substantially all, or certain of the Debtors’ assets to Murray NewCo (the “Stalking Horse Bidder”) or another successful bidder or bidders (each, a “Successful Bidder”) at an auction, the Debtors filed a motion [Docket No. [●]] (the “Motion”) seeking, among other things, the entry of an order (a) authorizing the Debtors’ entry into an asset purchase agreement (the “Stalking Horse Purchase Agreement”), (b) authorizing and approving the Debtors’ bidding procedures (the “Bidding Procedures”) in connection with the proposed auction (the “Auction”) for some or all of the Debtors’ assets (the “Assets”) to one or more successful bidders, (c) scheduling dates and deadlines in connection with approval of the Sale (the “Sale Schedule”), and (d) approving procedures for the assumption and assignment of executory contracts and unexpired leases in connection with the Sale (the “Assumption Procedures”).

**PLEASE TAKE FURTHER NOTICE** that on December 3, 2019, the Debtors filed the *Debtors’ Joint Plan of Reorganization Pursuant to Chapter 11 of the Bankruptcy Code* (the “Plan”) [Docket No. 322] and the *Disclosure Statement for the Debtors’ Joint Plan of*

<sup>1</sup> Due to the large number of Debtors in these chapter 11 cases, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. Such information may be obtained on the website of the Debtors’ claims and noticing agent at <https://cases.primeclerk.com/MurrayEnergy>. The location of Debtor Murray Energy Holdings Co.’s principal place of business and the Debtors’ service address in these chapter 11 cases is 46226 National Road, St. Clairsville, Ohio 43950.

<sup>2</sup> Capitalized terms used in this notice and not immediately defined have the meanings given to such terms in the Bidding Procedures (as defined herein).

*Reorganization Pursuant to Chapter 11 of the Bankruptcy Code* (the “Disclosure Statement”) [Docket No. 323].

**PLEASE TAKE FURTHER NOTICE** that on [●], 2020, the Court entered an order [Docket No. [●]] (the “Bidding Procedures Order”) granting certain of the relief sought in the Motion, including, among other things, approving (a) the Bidding Procedures, (b) the Sale Schedule, and (c) the Assumption Procedures.

**PLEASE TAKE FURTHER NOTICE** that the Debtors expect to seek approval of the Sale at a hearing confirming the Plan on [●], 2020, at [●] [a./p.m.], **prevailing Eastern Time** (the “Sale Hearing”). If after the conclusion of the Auction, the Debtors determine in accordance with the Bidding Procedures that a sale will occur pursuant to section 363 of the Bankruptcy Code, then the Debtors will contact the Court’s chambers to obtain a new date and time for the Sale Hearing, and the Debtors will provide notice of the updated Sale Hearing and Sale Objection Deadline.

**Contact Persons for Parties Interested in Submitting a Bid**

The Bidding Procedures set forth in detail the requirements for submitting Indication of Interest Documents and Qualified Bids, and any person interested in making an offer to purchase the Assets **must** comply strictly with the Bidding Procedures. **Only Indication of Interest Documents and Qualified Bids that are submitted in accordance with the Bidding Procedures will be considered by the Debtors.** Any persons interested in making an offer to purchase the Assets should contact:

Proposed Financial Advisor and Investment Banker to the Debtors	Proposed Counsel to the Debtors
Evercore Group L.L.C. 55 E. 52nd Street New York, New York 10055 Attn: John Startin (john.startin@evercore.com) Andrew Frame (andrew.frame@evercore.com) Pavel Te (pavel.te@evercore.com)	Kirkland & Ellis LLP 300 North LaSalle Chicago, Illinois 60654 Attn: Ross M. Kwasteniet, P.C. (rkwasteniet@kirkland.com) Joseph M. Graham (joe.graham@kirkland.com) Tricia Schwallier (tricia.schwallier@kirkland.com)  -and-  601 Lexington Avenue New York, New York 10022 Attn: Nicole L. Greenblatt, P.C. (ngreenblatt@kirkland.com) Alexander Nicas (alexander.nicas@kirkland.com)

### **Obtaining Information**

Copies of the Bidding Procedures Order, the Bidding Procedures, the Plan, and any other related documents are available upon request to Prime Clerk, LLC, the Debtors' notice and claims agent, by calling (877) 422-5170 (Domestic) or (917) 947-2680 (International), or by visiting the case website at <http://cases.primeclerk.com/MurrayEnergy>.

### **The Sale Schedule**

1. The deadline to submit the Indication of Interest Documents (the "**Preliminary Bid Deadline**") is **January 21, 2020, at 4:00 p.m., prevailing Eastern Time**.
2. The deadline to submit a Qualified Bid (the "**Final Bid Deadline**") is **March 2, 2020, at 4:00 p.m., prevailing Eastern Time**.
3. The Auction for the Assets, if one is necessary, will commence on **March 12, 2020, at [●] [a/p].m., prevailing Eastern Time**, at the offices of Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, or at such later time or other place as the Debtors will timely notify the Stalking Horse Bidder and all other Qualified Bidders.
4. The deadline to file an objection with the Court to the entry of an order approving the Sale is **[●], 2020, at 4:00 p.m., prevailing Eastern Time** (the "**Sale Objection Deadline**").
5. A hearing to consider approval of the proposed Sale will be held before the Honorable John E. Hoffman, Jr. on **[●], 2020, at [●], prevailing Eastern Time**, or such other date as determined by the Court, at the **United States Bankruptcy Court for the Southern District of Ohio, Courtroom A, 5th Floor, 170 North High Street, Columbus, Ohio 43215**.

### **Filing Objections to the Sale**

Any objection to the Sale must: (a) be in writing; (b) conform to the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules for the Southern District of Ohio, *General Order 30-2* from the United States Bankruptcy Court for the Southern District of Ohio, dated October 10, 2019 (the "**General Order**"), and the *Order Implementing Certain Notice and Case Management Procedures* [Docket No. 113] (the "**Case Management Order**") approved by the Court; (c) be filed electronically with the Court on the docket of *In re Murray Energy Holdings Co.*, Case 19-56885 (JEH), by registered users of the Court's electronic filing system and in accordance with the General Order (which is available on the Court's website at <http://www.ohsb.uscourts.gov>); and (d) be served so as to be **actually received** on or prior to the Sale Objection Deadline, by (i) the entities on the Master Service List (as defined in the Case Management Order and available on the Debtors' case website at <https://cases.primeclerk.com/MurrayEnergy>) and (ii) any person or entity with a particularized interest in the subject matter of the motion.

**Consequences of Failing to Timely File an Objection**

**Any party or entity who fails to timely file an objection to the Sale on or before the Sale Objection Deadline in accordance with the Bidding Procedures Order, shall be forever barred from asserting any objection to the Sale of the Assets.**

\* \* \* \* \*

**Exhibit 4**

**Contract Assumption Notice**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

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In re:	)	Chapter 11
	)	
MURRAY ENERGY HOLDINGS CO., <i>et al.</i> , <sup>1</sup>	)	Case No. 19-56885 (JEH)
	)	
	)	Judge John E. Hoffman, Jr.
	)	
Debtors.	)	(Jointly Administered)

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**NOTICE OF PROPOSED ASSUMPTION AND ASSIGNMENT OF  
CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

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**PLEASE TAKE NOTICE** that the above-captioned debtors and debtors in possession (collectively, the “Debtors”)<sup>2</sup> each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), in the United States Bankruptcy Court for the Southern District of Ohio (the “Court”) on October 29, 2019.

**PLEASE TAKE FURTHER NOTICE** that on December 4, 2019, in connection with the proposed sale (the “Sale”) of all, substantially all, or certain of the Debtors’ assets to Murray NewCo (the “Stalking Horse Bidder”) or another successful bidder or bidders (each, a “Successful Bidder”) at an auction, the Debtors filed a motion [Docket No. [●]] (the “Motion”) seeking, among other things, the entry of an order (a) authorizing the Debtors’ entry into an asset purchase agreement (the “Stalking Horse Purchase Agreement”), (b) authorizing and approving the Debtors’ bidding procedures (the “Bidding Procedures”) in connection with the proposed auction (the “Auction”) for some or all of the Debtors’ assets (the “Assets”), (c) scheduling dates and deadlines in connection with approval of the Sale (the “Sale Schedule”), and (d) approving procedures for the assumption and assignment of executory contracts and unexpired leases in connection with the Sale (the “Assumption Procedures”).

**PLEASE TAKE FURTHER NOTICE** that on [●], 2020, the Court entered an order [Docket No. [●]] (the “Bidding Procedures Order”) granting certain of the relief sought in the

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<sup>1</sup> Due to the large number of Debtors in these chapter 11 cases, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. Such information may be obtained on the website of the Debtors’ claims and noticing agent at <https://cases.primeclerk.com/MurrayEnergy>. The location of Debtor Murray Energy Holdings Co.’s principal place of business and the Debtors’ service address in these chapter 11 cases is 46226 National Road, St. Clairsville, Ohio 43950.

<sup>2</sup> Capitalized terms used in this notice and not immediately defined have the meanings given to such terms in the Bidding Procedures (as defined herein).

Motion, including, among other things, approving (a) the Bidding Procedures, (b) the Sale Schedule, and (c) the Assumption Procedures.

**PLEASE TAKE FURTHER NOTICE** that upon the closing of the Sale, the Debtors intend to assume and assign to the Stalking Horse Bidder or any other Successful Bidder the executory contracts and unexpired leases set forth on **Exhibit 1** hereto (each, an “Assigned Contract,” and collectively, the “Assigned Contracts”). In addition, the cure payments, if any, necessary for the assumption and assignment of the Assigned Contracts (the “Cure Payments”) are set forth on **Exhibit 1**.

**PLEASE TAKE FURTHER NOTICE** that nothing herein (i) alters in any way the prepetition nature of the Assigned Contracts or the validity, priority, or amount of any claims of a counterparty to any Assigned Contract against the Debtors that may arise under such Assigned Contract, (ii) creates a postpetition contract or agreement, or (iii) elevates to administrative expense priority any claims of a counterparty to any Assigned Contract against the Debtors that may arise under such Assigned Contract.

**YOU ARE RECEIVING THIS NOTICE BECAUSE THE STALKING HORSE BIDDER HAS IDENTIFIED YOU AS A COUNTERPARTY TO A POTENTIAL ASSIGNED CONTRACT OR UNEXPIRED LEASE, BUT THE INCLUSION OF YOUR CONTRACT ON THE NOTICE DOES NOT MEAN THAT THE STALKING HORSE BIDDER HAS DETERMINED WHETHER TO SEEK ASSUMPTION AND ASSIGNMENT OF YOUR CONTRACT OR LEASE.** Under the terms of the Assumption Procedures, the Stalking Horse Bidder may modify the list of Assigned Contracts on **Exhibit 1** until the Final Bid Deadline (as defined herein). The Stalking Horse Bidder may further modify the list of Assigned Contracts at any time prior to two business days before the closing of the Sale to (a) add any contract as an Assumed Contract (subject to the terms of the Stalking Horse Purchase Agreement) or (b) remove any contract Assumed Contract that Stalking Horse Bidder does not wish to assume. The Debtors reserve the right at any time before the closing of a Sale, to (a) supplement the list of Assigned Contracts with previously omitted executory contracts or unexpired leases, (b) remove Assigned Contracts from the list of executory contracts and unexpired leases ultimately selected as Assigned Contracts that a Successful Bidder proposes be assumed and assigned to it in connection with a Sale, and/or (c) modify the previously stated Cure Payment associated with any Assigned Contracts. Any counterparty impacted by such a modification will receive notice thereof (the “Supplemental Assumption Notice”) and, if applicable, an opportunity to object to the proposed assumption and assignment of the Assigned Contract. To the extent a Qualified Bidder other than the Stalking Horse Bidder is the Successful Bidder and such Successful Bidder adds or removes an Assigned Contract from the list of Assigned Contracts, the Debtors will send notice to impacted counterparties as soon as practicable following the Auction.

#### **Obtaining Additional Information**

Copies of the Bidding Procedures Order, the Bidding Procedures, the Plan, and any other related documents are available upon request to Prime Clerk, LLC, the Debtors’ notice and claims agent, by calling (877) 422-5170 (Domestic) or (917) 947-2680 (International), or by visiting the case website at <http://cases.primeclerk.com/MurrayEnergy>.

**Important Dates and Deadlines**

1. The deadline to submit a Qualified Bid (the “Final Bid Deadline”) is **March 2, 2020, at 4:00 p.m., prevailing Eastern Time.**
2. The Auction for the Assets, if one is necessary, will commence on **March 12, 2020, at [●] [a/p].m., prevailing Eastern Time,** at the offices of Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, or at such later time or other place as the Debtors will timely notify the Stalking Horse Bidder and all other Qualified Bidders.
3. The deadline to file an objection with the Court to the entry of an order approving the Sale is **[●], 2020, at 4:00 p.m., prevailing Eastern Time** (the “Sale Objection Deadline”).
4. A hearing to consider approval of the proposed Sale will be held before the Honorable John E. Hoffman, Jr. on **[●], 2020, at [●], prevailing Eastern Time,** or such other date as determined by the Court, at the **United States Bankruptcy Court for the Southern District of Ohio, Courtroom A, 5th Floor, 170 North High Street, Columbus, Ohio 43215.**

**Filing Assumption and Assignment Objections**

Pursuant to the Assumption Procedures, objections to the proposed assumption and assignment of an Assigned Contract, including any objection relating to the Cure Payment and/or adequate assurance of future performance, must: (a) be in writing; (b) comply with the applicable provisions of the Bankruptcy Rules, the Local Rules, and the Case Management Order; (c) state with specificity the nature of such objection and, if the objection pertains to the Cure Payment, the correct Cure Payment alleged by the objecting counterparty, together with any applicable and appropriate documentation in support thereof; and (d) be filed with the Court and served so as to be actually received by (i) proposed counsel to the Debtors, (ii) counsel to the Ad Hoc Group of Superpriority Lenders, (iii) proposed Counsel to the UCC, and the (iv) the United States Trustee, before the Sale Objection Deadline or such deadline set forth in the Supplemental Assumption Notice, as applicable.

Failure to timely file an objection shall constitute a waiver of any objections related to accepting performance by, or rendering performance to, the Stalking Horse Bidder or any other Successful Bidder for purposes of section 365(c)(1) of the Bankruptcy Code.

Any objections will be considered at the Sale Hearing, or as soon thereafter as counsel may be heard, and must be served on the following parties:

<b>Proposed Counsel to the Debtors</b>	<b>United States Trustee</b>
Kirkland & Ellis LLP 300 North LaSalle Chicago, Illinois 60654 Attn: Steve Toth, Joseph M. Graham	Office of the United States Trustee J.W. Peck Federal Building 550 Main Street, Suite 4-812 Cincinnati, Ohio 45202

<b>Counsel to the Ad Hoc Group of Superpriority Lenders</b>	<b>Proposed Counsel to the UCC</b>
Davis Polk & Wardwell LLP 450 Lexington Avenue New York, NY 10017 Attn: Damian S. Schaible and Adam L. Shpeen	Morrison & Foerster, LLP 250 West 55th Street New York, NY 10019 Lorenzo Marinuzzi and Jennifer Marines

**Consequences of Failing to Timely File and Serve an Objection**

**Any counterparty to an Assigned Contract who fails to timely file and serve an objection to the proposed assumption and assignment of an Assigned Contract in accordance with the Bidding Procedures Order and Assumption Procedures incorporated therein shall be forever barred from asserting any objection to the assumption and assignment of the Assigned Contract and/or the Cure Payment set forth on Exhibit 1, including asserting additional cure amounts with respect to an Assigned Contract relating to any period prior to the time of assumption and assignment.**

\* \* \* \* \*

**Exhibit B**

**Startin Declaration**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

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In re:	)	
	)	Chapter 11
MURRAY ENERGY HOLDINGS CO., <i>et al.</i> , <sup>1</sup>	)	Case No. 19-56885 (JEH)
	)	
	)	Judge John E. Hoffman, Jr.
	)	
Debtors.	)	(Jointly Administered)
	)	

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**DECLARATION OF JOHN STARTIN IN SUPPORT OF THE DEBTORS’  
MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING  
THE DEBTORS TO ENTER INTO AND PERFORM UNDER  
THE STALKING HORSE PURCHASE AGREEMENT, (II) APPROVING THE  
BIDDING PROCEDURES IN CONNECTION WITH THE SALE OF ALL  
OR SUBSTANTIALLY ALL OF THE DEBTORS’ ASSETS, (III) APPROVING THE  
PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY  
CONTRACTS AND UNEXPIRED LEASES, AND (IV) GRANTING RELATED RELIEF**

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I, John Startin hereby declare under penalty of perjury:

1. I am over the age of 18 and competent to testify. I am a Senior Managing Director of Evercore Group L.L.C. (“Evercore”),<sup>2</sup> the proposed investment banker of the above-captioned debtors and debtors in possession (collectively, the “Debtors”). I submit this declaration to support the relief requested in the *Debtors’ Motion for Entry of an Order (I) Authorizing the Debtors to Enter into and Perform Under the Stalking Horse Purchase Agreement, (II) Approving the Bidding Procedures in Connection with the Sale of All or Substantially All of the Debtors’ Assets,*

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<sup>1</sup> Due to the large number of Debtors in these chapter 11 cases, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. Such information may be obtained on the website of the Debtors’ claims and noticing agent at <https://cases.primeclerk.com/MurrayEnergy>. The location of Debtor Murray Energy Holdings Co.’s principal place of business and the Debtors’ service address in these chapter 11 cases is 46226 National Road, St. Clairsville, Ohio 43950.

<sup>2</sup> The Debtors are seeking to retain Evercore in these chapter 11 cases pursuant to a retention application filed on November 15, 2019 [Docket No. 223].

*(III) Approving the Procedures for the Assumption and Assignment of Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief* (the “Motion”).<sup>3</sup>

2. Unless otherwise indicated, all facts set forth in this declaration are based upon (a) my attendance and oversight of the sale process, (b) information learned from my review of relevant financial and operational data regarding the Debtors, (c) information received from members of the Debtors’ management or their other advisors, and (d) my past experience advising both distressed and non-distressed businesses and companies and their stakeholders.

3. I am authorized to submit this declaration on behalf of the Debtors, and, if I were called upon to testify, I could and would testify competently to the facts set forth herein.

#### **Qualifications**

4. Evercore was engaged by the Debtors on a prepetition basis to act as their investment banker in connection with the Debtors’ restructuring initiatives. During the lead up to the chapter 11 case, Evercore acquired significant knowledge of the Debtors’ business, including their financial affairs, debt structure, business operations, capital structure, key stakeholders, financing documents, and related matters. Following the Petition Date, the Debtors have sought to retain Evercore on a postpetition basis to serve as an investment banker and to run, among other things, an extensive marketing process for all or substantially all of the Debtors’ assets (the “Assets”).

5. Established in 1995, Evercore is a leading independent investment banking advisory and investment management firm. Evercore’s investment banking business includes its advisory business, which provides a range of financial advisory services to multinational

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<sup>3</sup> Capitalized terms used in this declaration and not immediately defined have the meanings given to such terms in the Motion.

corporations on mergers and acquisitions, divestitures, special committee assignments, recapitalizations, restructurings, and other strategic transactions. Evercore and its affiliates serve a diverse set of clients around the world from offices in New York, Boston, Chicago, Los Angeles, Washington D.C., San Francisco, Houston, Minneapolis, Palo Alto, Menlo Park, West Palm Beach, Tampa, Wilmington, Atlanta, Dallas, Toronto, Hong Kong, Frankfurt, Madrid, Beijing, Dubai, Tokyo, Singapore, London, Aberdeen, Mexico City, and Monterrey. Since its founding, Evercore's corporate advisory and restructuring advisory groups have advised on over \$3.0 trillion of transactions.

6. I am a Senior Managing Director in Evercore's Corporate Advisory business, responsible for the Firm's global Metals, Materials and Mining franchise. I joined Evercore in April 2019. Prior to joining Evercore, I was employed by Goldman Sachs for approximately thirteen years, where I was most recently a Managing Director, Head of Metals and Mining in the Americas, and a member of the M&A Group. I have advised numerous coal miners and other companies in the broad metals and mining industries on capital raisings, mergers, acquisitions, divestitures and restructurings. I read Philosophy, Politics & Economics at The Queen's College, Oxford, and was awarded a B.A. and a M.A. by the University of Oxford. I received my M.B.A. from the Wharton School at the University of Pennsylvania.

### **The Debtors' Marketing Process**

7. Following the Petition Date, Evercore began the marketing the Debtors' Assets by reaching out to potential purchasers to explore a sale of the Assets. Evercore has contacted 86 potential purchasers and commenced negotiating non-disclosure agreements with interested purchasers. Following the approval of the proposed Bidding Procedures, the Debtors, with the aid of Evercore, will continue to market the Assets to potential buyers, including, without limitation, those potential buyers approached by Evercore and/or expressing inbound interest earlier in the

marketing process, by (a) engaging potential buyers and investors that may have an interest in bidding for the Assets, (b) delivering updated materials to such interested parties, (c) providing access to a data room of confidential information on the Assets to interested parties, and (d) providing customized information packets to potential purchasers as appropriate.

**The Stalking Horse Bid and the Bidding Procedures**

8. Concurrent with the marketing process, the Debtors and their advisors entered into arm's-length negotiations with the Stalking Horse Bidder on the terms of a credit bid, which have resulted in the Term Sheet attached as Exhibit 1 to the Bidding Procedures Order. The Term Sheet sets forth the basic terms of the Stalking Horse Bid and the Stalking Horse Purchase Agreement, which the Debtors will continue to negotiate in good faith. With the Term Sheet serving as the floor for ongoing negotiations, I believe that formal approval of the Bidding Procedures will allow the Debtors to clearly set terms and conditions that will facilitate third-party participation in the sale process.

9. The Bidding Procedures, among other things, set forth deadlines by which potential bidders should submit their initial indications of interest, final bids, and the date of an auction (if necessary). These dates and deadlines are aligned with the milestones set forth in the Debtors' DIP Facility and RSA. I do not believe that the proposed sale schedule will limit the participation of any potential bidders. By the time of the Final Bid Deadline, more than three months will have passed since Evercore and the Debtors began marketing the Assets, giving potential bidders sufficient time to conduct the required due diligence necessary to develop informed bid proposals.

10. As described above, Evercore intends to continue marketing the Assets during this timeframe with the goal of eliciting topping bids to the Stalking Horse Bid. The Bidding Procedures provide for an organized process through which interested parties may submit bids to purchase the Assets, either on an individual or consolidated basis, and further provide the

procedures and requirements for participation in a competitive auction process. If an auction occurs, the Stalking Horse Bid will establish a floor for bidding that may increase the consideration received in exchange for the purchased assets for the benefit of the Debtors' estates. The procedures for conducting an auction or auctions are designed to encourage active participation by potential purchasers and will ensure that the Debtors will receive the highest or otherwise best possible offer for the Assets.

11. I believe that the Bidding Procedures set forth an open and fair sale process, which is the best means for demonstrating that the highest or best price is being paid for the Assets. Importantly neither the Bidding Procedures nor the Term Sheet impact the Debtors' ability to pursue an alternative transaction or restructuring strategy, if necessary. Accordingly, I believe that there is a strong business justification for the proposed Bidding Procedures, including entry into a Stalking Horse Purchase Agreement on terms consistent with the Term Sheet.

*[Remainder of page intentionally left blank]*

Pursuant to 28 U.S.C. § 1746, I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: December 4, 2019  
New York, New York



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John Startin  
Senior Managing Director  
Evercore L.L.C.