EXECUTION VERSION

AGREEMENT AND PLAN OF MERGER

dated as of

FEBRUARY 23, 2018

by and among

MURRAY KENTUCKY ENERGY, INC.,

WESTERN KENTUCKY MERGER SUB, LLC,

WESTERN KENTUCKY COAL RESOURCES, LLC

and

MURRAY SOUTH AMERICA, INC.
(solely with respect to Section 4.11)

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AGREEMENT AND PLAN OF MERGER

This Agreement and Plan of Merger (this "**Agreement**"), dated as of February 23, 2018, is made and entered into by and among Murray Kentucky Energy, Inc., a Kentucky Corporation ("**Purchaser**"); Western Kentucky Merger Sub, LLC, a Delaware limited liability company and wholly owned subsidiary of Purchaser ("**Merger Sub**"); Western Kentucky Coal Resources, LLC, a Delaware limited liability company (the "**Company**"); and, solely with respect to Section 4.11, Murray South America, Inc., a Delaware corporation ("**MSAI**"). Purchaser, Merger Sub and the Company are sometimes referred to herein, collectively, as the "**Parties**" and each, individually, as a "**Party**".

W I T N E S S E T H:

WHEREAS, the board of managers of the Company (a) has deemed it advisable and in the best interests of the Company and the Unitholders (as defined below) that the Company consummate the Merger (as defined below) and the other transactions contemplated by this Agreement and (b) has authorized and approved this Agreement and the Merger on the terms and subject to the conditions herein;

WHEREAS, the Requisite Holders (as defined below) have authorized and approved this Agreement and the Merger on the terms and subject to the conditions herein; and

WHEREAS, Purchaser, as the sole and managing member of Merger Sub, (a) has deemed it advisable and in the best interests of Merger Sub and the holders of the Capital Stock (as defined below) of Merger Sub that Merger Sub consummate the Merger and the other transactions contemplated by this Agreement, and (b) has authorized and approved this Agreement and the Merger, on the terms and subject to the conditions herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the Parties agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01 *Definitions*. In this Agreement, the following words and expressions shall have the following meanings:

"**Act**" has the meaning set forth in Section 2.01(a).

"**Action**" means, without duplication, any cause of action, complaint, litigation, demand, inquiry, dispute, action, lawsuit, claim (including cross-claims and counter-claims), suit, arbitration, hearing, examination, or judicial or legal proceeding or investigation, whether civil, criminal, investigative, appellate or administrative, at law or in equity, or by or before any Governmental Authority or any other assertion of liability.

"**Affiliate**" means, with respect to any specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under

common control with, such specified Person. The term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"**Aggregate Preferred Amount**" means an amount equal to $9,209,600.

"**Agreement**" has the meaning set forth in the preamble.

"**Ancillary Agreements**" means all agreements, other than this Agreement, entered into in connection with the execution of this Agreement or the consummation of the Merger and the other transactions contemplated hereby.

"**Armstrong**" means Armstrong Energy, Inc., a Delaware corporation.

"**Base Amount**" means an amount equal to $39,083,325.

"**Business Day**" means any day other than a Saturday, Sunday or a day on which banks in New York, New York are authorized or obligated by Law to close.

"**Capital Stock**" means (a) any shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, (b) any ownership interests in a Person other than a corporation, including units, membership interests, partnership interests, joint venture interests and beneficial interests and (c) any warrants, options, convertible or exchangeable securities, subscriptions, rights (including any preemptive or similar rights), calls or other rights to purchase or acquire any of the foregoing.

"**Certificate of Merger**" has the meaning set forth in Section 2.01(b).

"**Class A Common Unit**" has the meaning ascribed to such term in the Company Operating Agreement.

"**Class B Common Unit**" has the meaning ascribed to such term in the Company Operating Agreement.

"**Closing**" has the meaning set forth in Section 2.05.

"**Closing Date**" has the meaning set forth in Section 2.05.

"**Code**" means the Internal Revenue Code of 1986.

"**Company**" has the meaning set forth in the preamble.

"**Company Operating Agreement**" means that certain Amended and Restated Limited Liability Company Agreement of the Company, dated as of February 20, 2018, as amended, supplemented or otherwise modified.

"**Documents**" means, collectively, each Ancillary Agreement and each other agreement, instrument, document and certificate delivered in connection with the consummation of the Merger or the other transactions contemplated by this Agreement.

"**Effective Time**" has the meaning set forth in Section 2.01(b).

"**Governmental Authority**" means any federal, national, supranational, foreign, state, provincial, local, county, municipal or other government, any governmental, regulatory or administrative authority, agency, department, bureau, board, commission or official or any quasi-governmental or private body exercising any regulatory, taxing, importing or other governmental or quasi-governmental authority, or any court, tribunal, judicial or arbitral body, or any Self-Regulatory Organization (in each case to the extent that the rules, regulations or orders of such body or authority have the force of Law).

"**Imperial**" means Imperial Capital, LLC.

"**Law**" means any material law (statutory, common or otherwise), including any material statute, ordinance, regulation, rule, code, executive order, injunction, judgment, decree or other order of a Governmental Authority.

"**Letter of Transmittal**" means the letter of transmittal sent to the Unitholders by the Transfer Agent in connection with the consummation of the transactions contemplated by that certain Transaction Agreement, dated as of January 24, 2018, by and among Armstrong; certain subsidiaries of Armstrong that are signatories thereto; certain holders of Senior Secured Notes of Armstrong due in 2019 that are signatories thereto; Purchaser; solely with respect to Section 8.3(b) thereof, Murray South America, Inc., a Delaware corporation; and KenAmerican Resources, Inc., a Kentucky corporation.

"**MEC**" means Murray Energy Corporation, an Ohio corporation.

"**MEC Notes**" means second lien 11.25% notes due April 2021, having the CUSIP/CINS 62704P AJ2 or U61739 AG0, issued by MEC pursuant to that certain Third Supplemental Indenture, dated as of the date hereof, by and among MEC, the guarantors listed on the signature pages thereto, and The Bank of New York Mellow Trust Company, N.A.

"**Merger**" has the meaning set for in Section 2.01(a).

"**Merger Sub**" has the meaning set forth in the preamble.

"**Minimum Denomination**" means an amount equal to $2,000.

"**Net Amount**" mean an amount equal to (a) the Base Amount, *minus* (b) the Aggregate Preferred Amount.

"**Organizational Documents**" means, with respect to a Person that is not an individual, its articles of incorporation, certificate of incorporation, certificate of formation, bylaws, memorandum and/or articles of incorporation, operating agreement, certificate of limited partnership, partnership agreement and/or similar documents, instruments or certificates

executed, adopted or filed in connection with the creation, formation or organization of such Person, including any amendments thereto.

"**Party**" and "**Parties**" have the meanings set forth in the preamble.

"**Person**" means and includes an individual, a partnership (general or limited), a joint venture, a corporation, a trust, an estate, a limited liability company, an association, a joint-stock company, an unincorporated organization or other entity and a Governmental Authority.

"**Preferred Consideration**" means, with respect to each Unitholder, an amount equal to (a) the number of Preferred Units held by such Unitholder, *multiplied by* (b) $10.

"**Preferred Unit**" has the meaning ascribed to such term in the Company Operating Agreement.

"**Pro Rata Share**" means, with respect to each Unitholder, an amount (rounded to the nearest ten-thousandth) equal to (a) the number of Class B Units held by such Unitholder, *divided by* (b) the total Class B Units held by all of the Unitholders other than the Purchaser Unitholders.

"**Purchaser**" has the meaning set forth in the preamble.

"**Purchaser Unitholders**" means Purchaser and any of its Subsidiaries and/or Affiliates that hold Units.

"**Remaining Unitholders**" means the Unitholders other than the Specified Unitholders and the Purchaser Unitholders.

"**Requisite Holders**" means Unitholders who own a majority of then-current percentage in the profits of the Company, including Class B Members (as defined in the Company Operating Agreement) of the Company holding a majority of the Class B Units.

"**Self-Regulatory Organization**" means any securities exchange, futures exchange, contract market, any other exchange or corporation or similar self-regulatory body or organization applicable to a Party.

"**Specified Unitholders**" means the Unitholders set forth on Annex A.

"**Subsidiary**" means, when used with reference to any Person, any corporation, partnership, limited liability company, joint venture, stock company or other entity of which such Person (either acting alone or together with its other Subsidiaries), directly or indirectly, owns or has the power to vote or to exercise a controlling influence with respect to more than 50% of the Capital Stock or other voting interests, the holders of which are entitled to vote for the election of a majority of the board of directors or any similar governing body of such corporation, partnership, limited liability company, joint venture, stock company or other entity or are the controlling member or partner.

"**Surviving LLC**" has the meaning set forth in Section 2.01(a).

"**Surviving LLC Operating Agreement**" has the meaning set forth in Section 2.02(a).

"**Transfer Agent**" means American Stock Transfer and Trust Company LLC.

"**Unitholder**" means the members of the Company as set forth in the Company Operating Agreement.

"**Units**" means the Class A Common Units, the Class B Common Units and the Preferred Units.

Section 1.02 *Other Definitional and Interpretive Provisions*.

(a) Article, titles and headings to Sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

(b) The Annexes and Exhibits referred to herein shall be construed with and as an integral part of this Agreement to the same extent as if they were set forth verbatim herein. The references herein to Sections, Articles, Exhibits and Annexes, unless otherwise indicated, are references to Sections and Articles of, and Exhibits and Annexes to, this Agreement.

(c) Words used herein, regardless of the gender specifically used, shall be deemed and construed to include any other gender, masculine, feminine or neuter, as the context requires.

(d) In this Agreement, except to the extent that the context otherwise requires, "day" and "days" means calendar day(s). If the last day for the giving of any notice or the performance of any act required or permitted under this Agreement is a day that is not a Business Day, then the time for the giving of such notice or the performance of such action shall be extended to the next succeeding Business Day.

(e) Whenever the words "include," "includes" or "including" are used in this Agreement, they are deemed to be followed by the words "without limitation".

(f) The words "hereof," "herein" and "hereunder" and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement.

(g) All terms defined in this Agreement have the defined meanings when used in any certificate or other document made or delivered pursuant hereto, unless otherwise defined therein.

(h) References to a Person are also to such Person's heirs, executors, personal representatives, administrators, successors and permitted assigns; *provided*, *however*, that nothing in this Section 1.02(h) is intended to authorize any assignment or transfer not otherwise permitted by this Agreement.

(i) References herein to any agreement or contract (including this Agreement) mean such contract or agreement as amended, supplemented or modified from time to time in accordance with the terms thereof.

(j) References herein to any law or any license mean such law or license as amended, modified, codified, reenacted, supplemented or superseded in whole or in part, and in effect from time to time and also to refer to all rules and regulations promulgated thereunder.

(k) The Parties acknowledge and agree that this Agreement was negotiated fairly among them at arm's length and that the final terms of this Agreement are the product of the Parties' negotiations. Each Party acknowledges and agrees that it has sought and received legal counsel of its own choosing with regard to the contents of this Agreement and the rights and obligations affected hereby. The Parties agree that this Agreement shall be deemed to have been jointly and equally drafted by them, and that the provisions of this Agreement therefore should not be construed against a Party or Parties on the grounds that the Party or Parties drafted or was more responsible for drafting the provision(s).

ARTICLE II

THE MERGER

Section 2.01 *The Merger*.

(a) The Merger. In accordance with the provisions of this Agreement, at the Effective Time, Merger Sub will be merged with and into the Company (the "**Merger**") in accordance with the Delaware Limited Liability Company Act (the "**Act**"). Following the Merger, the Company will continue as the surviving limited liability company and wholly owned subsidiary of Purchaser (the "**Surviving LLC**"), and the separate existence of Merger Sub will cease.

(b) Consummation of the Merger. At the Closing, the Company and Merger Sub shall file with the Secretary of State of the State of Delaware a certificate of merger ("**Certificate of Merger**") executed in accordance with the relevant provisions of the Act and attached hereto as Exhibit A, and shall make such other filings or records as required under the Act. If the Secretary of State of the State of Delaware requires any changes in the Certificate of Merger as a condition to filing or issuing a certificate to the effect that the Merger is effective, the Company and Merger Sub shall execute any necessary revisions incorporating such changes; *provided*, that such changes are not inconsistent with and do not request any substantive change in the terms of this Agreement. The Merger shall become effective at such time (the "**Effective Time**") as the Certificate of Merger is duly submitted to be filed with the Secretary of State of the State of Delaware (or at such later time as may be mutually agreed to by the Parties and as specified in the certificate of merger).

(c) Effect of the Merger. The Merger will have the effects as set forth in the Act and as provided in this Agreement. Without limiting the generality of the foregoing, as of the Effective Time, all properties, rights, privileges, immunities, powers and franchises of the Company and Merger Sub will vest in the Surviving LLC, and all debts, liabilities, obligations

and duties of the Company and Merger Sub will become debts, liabilities, obligations and duties of the Surviving LLC.

Section 2.02 *The Surviving LLC*.

(a) Operating Agreement. At the Effective Time, by virtue of the Merger and without any action on the part of Merger Sub, the Company or any other Person, the Company Operating Agreement shall be amended and restated in the form attached hereto as Exhibit B (the "**Surviving LLC Operating Agreement**").

(b) Officers. At the Effective Time, the officers of the Company, as of immediately prior to the Effective Time, shall be the officers of the Surviving LLC and will hold office from the Effective Time until their successors are duly elected or appointed and qualified in the manner provided for in the Surviving LLC Operating Agreement or until their resignation or removal or as otherwise provided by applicable Law.

Section 2.03 *Effect on Capital Stock of the Company*. At the Effective Time, by operation of law in respect of the Merger, and without any further action on the part of Purchaser, Merger Sub, the Company, the Unitholders or any other Person:

(a) (i) All Class A Common Units of the Company held by each Unitholder and (ii) all Units of the Company held by the Purchaser Unitholders, in each case, shall, at the Effective Time, be cancelled and retired and shall cease to exist and no payment shall be made with respect thereto.

(b) All Class B Common Units of the Company held by each Unitholder (other than the Purchaser Unitholders) shall, at the Effective Time, be cancelled and retired and shall cease to exist and shall be converted into the right to receive the Merger Consideration, subject to Section 2.06.

(c) All Preferred Units of the Company held by each Unitholder (other than the Purchaser Unitholders) shall, at the Effective Time, be cancelled and retired and shall cease to exist and shall be converted into the right to receive the Merger Consideration, subject to Section 2.06.

(d) Each Unitholder shall cease to have any rights as a Unitholder of the Company under the Company Operating Agreement, except for the rights described in Sections 2.03(a), 2.03(b) and 2.03(c).

Section 2.04 *Conversion of Merger Sub Capital Stock*. At the Effective Time, by operation of law in respect of the Merger, and without any further action on the part of Purchaser, Merger Sub, the Company, the Unitholders, the holders of the outstanding Capital Stock of Merger Sub or any other Person, all outstanding Capital Stock of Merger Sub shall be converted into 100% of the Capital Stock of the Surviving LLC, and the holders of the Capital Stock of the Surviving LLC, and the amount of such holdings, shall be reflected in the Surviving LLC Operating Agreement.

Section 2.05 *Closing Date*. Upon the terms and subject to the conditions set forth in this Agreement, the consummation of the Merger and the other transaction contemplated hereby (the "**Closing**") shall take place at the offices of Schulte Roth & Zabel LLP in New York, New York on the date hereof. The date on which the Closing takes place is herein referred to as the "**Closing Date**" All actions scheduled in this Agreement to take place at the Closing shall be deemed to occur simultaneously at the Effective Time.

Section 2.06 *Merger Consideration*. "**Merger Consideration**" means, with respect to each Unitholder, MEC Notes with a principal amount equal to (a) such Unitholder's Preferred Consideration, *plus* (b) *the product of* (i) the Net Amount, *multiplied by* (ii) such Unitholder's Pro Rata Share. Notwithstanding the foregoing, to the extent the Merger Consideration of any Unitholder, but for this sentence, (x) would be a principal amount that is less than the Minimum Denomination, then the Merger Consideration of such Unitholder shall be an amount in cash equal to (A) the principal amount calculated in accordance with this immediately preceding sentence, *multiplied by* (B) 0.565, or (y) would be a principal amount that is greater than the Minimum Denomination but not equal to a multiple of $1,000, then the Merger Consideration of such Unitholder shall be (A) MEC Notes with a principal amount equal to the greatest multiple of $1,000 that is less than the principal amount calculated in accordance with the immediately preceding sentence, and (B) an amount in cash equal to (1) such excess of multiple of $1,000, *multiplied by* (2) 0.565. The Merger Consideration of each Specified Unitholder consists of (i) MEC Notes with the principal amount set forth across from such Specified Unitholder's name on Annex A under the heading "*Principal Amount*" (if any), and (ii) an amount in cash equal to the amount set forth across from such Specified Unitholder's name on Annex A under the heading "*Cash Amount*" (if any), which, in each case and for the avoidance of doubt, was calculated in accordance with the two immediately preceding sentences. For the avoidance of doubt, the Parties acknowledge and agree that the MEC Notes exchanged pursuant to this Agreement as Merger Consideration have a fair market value of 56.5% of their stated principal amount as of the Effective Time.

Section 2.07 *Surrender and Payment*.

(a) Promptly following the Effective Time, the Surviving LLC will deliver, or cause to be delivered, to Imperial the Closing Date Free Delivery Instructions, substantially in the form attached hereto as Exhibit C, together with any additional instructions and/or documents required by Imperial in connection with the Closing Date Free Delivery Instructions.

(b) Promptly after the Effective Time (but in no event later than five Business Days after the Effective Time), the Surviving LLC shall cause the Transfer Agent to send to each Unitholder that has not delivered a properly completed Letter of Transmittal a notice to the Unitholders, in form and substance reasonably acceptable to the Surviving LLC, and instructions for use in the exchange of such Units for Merger Consideration pursuant to and in accordance with Section 2.03.

(c) Each Remaining Unitholder holding Units that have been converted into the right to receive the Merger Consideration pursuant to and in accordance with Section 2.03 shall be entitled to receive, upon delivery to the Transfer Agent of a properly completed Letter of Transmittal, the Merger Consideration in respect of such Units, subject to Section 2.06, and

Purchaser shall, as promptly as practicable following the receipt by the Transfer Agent of such properly completed letter of transmittal, deliver, or cause to be delivered, to Imperial free delivery instructions and/or other instructions or documents in respect of such Remaining Unitholder's Merger Consideration, to the extent required in connection with the payment thereof. From and after the Effective Time, each Unit shall represent, for all purposes, only the right to receive such Merger Consideration, and any holder of Units shall cease to have any rights with respect thereto except to receive the Merger Consideration pursuant to Sections 2.03(b) and 2.03(c).

Section 2.08 *Further Action*. Following Closing, each of the Parties shall execute and deliver such documents and take such further actions as may be reasonably necessary or desirable to carry out the provisions hereof and the Merger and the other transactions contemplated hereby. Upon the terms and subject to the conditions hereof, each of the Parties shall use all commercially reasonable efforts under the circumstances to take, or cause to be taken, all actions and to do, or cause to be done, all other things necessary, proper or advisable to consummate and make effective the Merger and the other transactions contemplated by this Agreement as promptly as practicable following the date hereof.

Section 2.09 *No Appraisal Rights*. Pursuant to the Act and the Company Operating Agreement, no appraisal or dissenter's rights shall be available with respect the Merger or the other transactions contemplated by this Agreement.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

Section 3.01 *Representations and Warranties of the Company*. The Company represents and warrants to Purchaser as of the date hereof as follows:

(a) Organization and Power. The Company is a limited liability company, duly organized, validly existing, and in good standing under the laws of the State of Delaware. The Company has all required limited liability company power and authority to own, lease, or otherwise hold its assets and to carry on its business as presently conducted, and to execute and deliver, and to perform its obligations under, this Agreement.

(b) Authorization and Non-Contravention. This Agreement is a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to the effect, if any, of (i) bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium, and other similar laws of general application affecting or relating to the enforcement of creditors' rights generally, and (ii) general principles of equity, including, without limitation, laws governing specific performance, injunctive relief, and other equitable remedies, whether considered in an action at law or in equity. The execution, delivery and performance of this Agreement has been duly authorized by all necessary action of the Company, and no other proceedings on the part of the Company are necessary to authorize or approve this Agreement.

(c) NO OTHER REPRESENTATIONS AND WARRANTIES. THE REPRESENTATIONS AND WARRANTIES MADE BY THE COMPANY IN THIS SECTION 3.01 ARE THE EXCLUSIVE REPRESENTATIONS AND WARRANTIES MADE BY THE COMPANY, AND THE COMPANY HEREBY DISCLAIMS ANY OTHER EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES NOT EXPRESSLY INCLUDED IN THIS AGREEMENT WHETHER OR NOT MADE, COMMUNICATED OR FURNISHED (ORALLY OR IN WRITING) TO PURCHASER OR ITS REPRESENTATIVES, INCLUDING ANY WARRANTY REGARDING ANY PRO FORMA FINANCIAL INFORMATION, FINANCIAL PROJECTIONS OR OTHER FORWARD-LOOKING STATEMENTS PROVIDED BY OR ON BEHALF OF THE COMPANY OR ANY OF ITS SUBSIDIARIES, WARRANTY OF MERCHANTABILITY, WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, OR ANY IMPLIED OR STATUTORY WARRANTY WHATSOEVER WITH RESPECT TO THE COMPANY OR ANY OF ITS SUBSIDIARIES AND ANY OF THEIR RESPECTIVE ASSETS OR PROPERTIES, INCLUDING ANY REAL OR PERSONAL PROPERTY OR ANY FIXTURES.

Section 3.02 *Representations and Warranties of Purchaser and Merger Sub*. Purchaser and Merger Sub represent and warrant to the Company as of the date hereof as follows:

(a) Organization and Power.

(i) Purchaser is a corporation, duly organized, validly existing, and in good standing under the laws of the State of Kentucky. Purchaser has all required corporate power and authority to own, lease, or otherwise hold its assets and to carry on its business as presently conducted, and to execute and deliver, and to perform its obligations under, this Agreement.

(ii) Merger Sub is a limited liability company, duly organized, validly existing, and in good standing under the laws of the State of Delaware. Merger Sub has all required limited liability company power and authority to own, lease, or otherwise hold its assets and to carry on its business as presently conducted, and to execute and deliver, and to perform its obligations under, this Agreement.

(b) Authorization and Non-Contravention. This Agreement is a valid and binding obligation of each of Purchaser and Merger Sub, enforceable against Purchaser and Merger Sub in accordance with its terms, subject to the effect, if any, of (i) bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium, and other similar laws of general application affecting or relating to the enforcement of creditors' rights generally, and (ii) general principles of equity, including, without limitation, laws governing specific performance, injunctive relief, and other equitable remedies, whether considered in an action at law or in equity. The execution, delivery and performance of this Agreement has been duly authorized by all necessary action of each of Purchaser and Merger Sub, and no other proceedings on the part of either Purchaser or Merger Sub are necessary to authorize or approve this Agreement.

(c) Independent Assessment; Investment Purpose.

(i) Purchaser and Merger Sub confirm that the Company has made, or caused to be made, available to Purchaser and Merger Sub the opportunity to ask questions of the officers and management of the Company and its Subsidiaries, to access all materials, documents and other information that it deems necessary or advisable to evaluate the Company and its Subsidiaries and the Merger and other transactions contemplated hereby. Purchaser and Merger Sub have made their own independent examination, investigation, analysis and any other relevant evaluation of the Company and its Subsidiaries, including their own estimate of the value of the Company and its Subsidiaries, taken as a whole, and has undertaken such due diligence as it deems appropriate.

(ii) Purchaser is acquiring the Capital Stock of the Company and of the Surviving LLC for investment for its own account and not with a view to, or for sale in connection with, any distribution thereof. Purchaser (either alone or together with its advisors) has sufficient knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks of its investment in the Capital Stock of the Company and of the Surviving LLC and is capable of bearing the economic risks of such investment.

(iii) Notwithstanding any other provision in this Agreement, Purchaser and Merger Sub acknowledge that neither the Company nor any of its Subsidiaries makes, will make or has made to the Purchaser or the Merger Sub, any representation or warranty, express or implied as to the prospects of the Company or any of its Subsidiaries, any forecasts, financial projections or prospective business plans made available to the Purchaser in connection with the Purchaser's review of the businesses and financial condition of the Company and its Subsidiaries.

(d) NO OTHER REPRESENTATIONS AND WARRANTIES. THE REPRESENTATIONS AND WARRANTIES MADE BY PURCHASER AND MERGER SUB IN THIS SECTION 3.02 ARE THE EXCLUSIVE REPRESENTATIONS AND WARRANTIES MADE BY PURCHASER AND MERGER SUB, AND PURCHASER AND MERGER SUB HEREBY DISCLAIMS ANY OTHER EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES NOT EXPRESSLY INCLUDED IN THIS AGREEMENT WHETHER OR NOT MADE, COMMUNICATED OR FURNISHED (ORALLY OR IN WRITING) TO THE COMPANY OR ITS REPRESENTATIVES, INCLUDING WARRANTY OF MERCHANTABILITY, WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, OR ANY IMPLIED OR STATUTORY WARRANTY WHATSOEVER WITH RESPECT TO PURCHASER, MERGER SUB, THEIR RESPECTIVE SUBSIDIARIES AND ANY OF THEIR RESPECTIVE ASSETS OR PROPERTIES, INCLUDING ANY REAL OR PERSONAL PROPERTY OR ANY FIXTURES.

ARTICLE IV

GENERAL PROVISIONS

Section 4.01 *Governing Law*. This Agreement and all claims or causes of action (whether in contract, tort or otherwise) that may be based upon, arise out of or relate to this

Agreement, or the negotiation, execution or performance of this Agreement, shall be governed by and construed and interpreted in accordance with the internal laws of the State of Delaware (without reference to its choice of law rules).

Section 4.02 *Consent to Jurisdiction*. Each Party hereby irrevocably and unconditionally (a) agrees that any Action, at law or equity, arising out of or relating to this Agreement or any agreements or transactions contemplated hereby shall only be brought in the Court of Chancery of the State of Delaware (or, if the Court of Chancery of the State of Delaware lacks jurisdiction, then in the applicable Delaware state court), or if under applicable Law exclusive jurisdiction of such Action is vested in the federal courts, then the United States District Court for the District of Delaware, (b) expressly submits to the personal jurisdiction and venue of such courts for the purposes thereof and (c) waives and agrees not to raise (by way of motion, as a defense or otherwise) any and all jurisdictional, venue and convenience objections or defenses that such Party may have in such Action. Each Party hereby irrevocably and unconditionally consents to the service of process of any of the aforementioned courts. Nothing herein contained shall be deemed to affect the right of any Party to serve process in any manner permitted by Law or commence legal proceedings or otherwise proceed against any other Party in any other jurisdiction to enforce judgments obtained in any Action brought pursuant to this Section 4.02.

Section 4.03 *Waiver of Jury Trial*. EACH OF THE PARTIES HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH OF THE PARTIES (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THAT FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 4.03.

Section 4.04 *Notices*. All notices or other communications, including service of process, required or permitted hereunder shall be in writing and shall be deemed given or delivered and received on the earliest of (a) the day when delivered, if delivered personally, (b) two Business Days after deposit with a nationally recognized courier or overnight service such as Federal Express (or upon any earlier receipt confirmed in writing by such service), (c) five Business Days after mailing via U.S. certified mail, return receipt requested or (d) on the date received (or if such date is not a Business Day, then on the next Business Day) if transmitted by facsimile, in each case addressed as follows:

If to Purchaser or Merger Sub, to:

Murray Kentucky Energy, Inc.
46226 National Road
St. Clairsville, Ohio 43950
Attention: Robert D. Moore
Fax No.: (740) 695-7028

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

Schulte Roth & Zabel LLP
919 Third Avenue
New York, New York 10022
Attention: David M. Hillman
Fax No.: (212) 593-5595

If to the Company:

Western Kentucky Coal Resources, LLC
46226 National Road
St. Clairsville, Ohio 43950
Attention: Robert D. Moore
Fax No.: (740) 695-7028

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

Schulte Roth & Zabel LLP
919 Third Avenue
New York, New York 10022
Attention: David M. Hillman
Fax No.: (212) 593-5595

or to such other address as any such Party has specified by prior written notice to the other Parties in accordance with this Section 4.04.

Section 4.05 *Successors and Assigns; Benefit*. (a) The rights of any Party under this Agreement shall not be assignable by such Party without the written consent of the other Parties and any purported assignment without such consent shall be null and void *ab initio*, and (b) no assignment shall relieve the assigning Party of any of its obligations hereunder. Notwithstanding the immediately preceding sentence, Purchaser and Merger Sub (and following the Closing Date, the Company) may, at any time and without the consent of any other Person, assign all or part of their respective rights under this Agreement to one or more of their respective Affiliates. This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein express or implied shall give or be construed to give to any Person, other than the Parties and such permitted assigns, any legal or equitable rights hereunder.

Section 4.06 *Entire Agreement; Amendments; Waiver*.

(a) This Agreement and the Exhibits and Annexes referred to herein and the Documents contain the entire understanding of the Parties with regard to the subject matter contained herein or therein, and supersede all prior agreements, understandings or intents, whether express or implied, between or among any of the Parties with respect to such subject matter.

(b) No amendment or modification of this Agreement shall be binding or effective for any purpose unless it is made in a writing signed by all of the Parties; *provided*, *however*, that no amendment or modification of ARTICLE II or Section 4.10 that would adversely affect, in any material respect, the rights of the Unitholders hereunder shall be permitted without the written consent of the Unitholders. No waiver of this Agreement shall be binding or effective for any purpose unless it is made in a writing signed by the Party against whom enforcement of such waiver is sought. No course of dealing between the Parties shall be deemed to modify, amend or discharge any provision or term of this Agreement. No delay or failure by any Party in the exercise of any of its rights or remedies shall operate as a waiver thereof, and no single or partial exercise by any Party of any such right or remedy shall preclude any other or further exercise thereof. A waiver of any right or remedy on any one occasion shall not be construed as a bar to or waiver of any such right or remedy on any other occasion.

Section 4.07 *Severability*. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of Law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the fullest extent possible.

Section 4.08 *Execution in Counterparts*. This Agreement may be executed in one or more counterparts, each of which shall be considered an original instrument, but all of which shall be considered one and the same agreement, and shall become binding when one or more counterparts have been signed by each of the Parties and delivered to each of the other Parties. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

Section 4.09 *Remedies; Specific Performance*. The Parties acknowledge that money damages may not be an adequate remedy at law if any Party fails to perform in any material respect any of its obligations hereunder and accordingly agree that each Party, in addition to any other remedy to which it may be entitled at law or in equity, shall be entitled to seek an injunction or similar equitable relief restraining such Party from committing or continuing any such breach or threatened breach or to seek, subject to Sections 4.01 and 4.02, to compel specific performance of the obligations of any other Party under this Agreement, without the posting of any bond, in accordance with the terms and conditions of this Agreement, and if

any action should be validly brought in equity to enforce any of the provisions of this Agreement, none of the Parties shall raise the defense that there is an adequate remedy at law. No remedy shall be exclusive of any other remedy, and all available remedies shall be cumulative.

Section 4.10 *No Recourse*. Notwithstanding anything to the contrary herein, this Agreement may only be enforced against, and any claims or causes of action for breach of this Agreement may only be made against the entities that are expressly identified as Parties, and no other Person shall have any liability for any obligations or liabilities of the Parties for any claim (whether in tort, contract or otherwise) for breach of this Agreement or in respect of any oral representations made or alleged to be made in connection herewith.

Section 4.11 *MSAI Guarantee*. MSAI hereby unconditionally and irrevocably guarantees to the prompt and full fulfillment of Purchaser's and Merger Sub's respective of obligations hereunder (collectively, the "**MSAI Obligations**"). The liability of MSAI under this Section 4.11 is, in all cases, subject to all defenses, setoffs and counterclaims available to Purchaser and Merger Sub with respect to performance or payment of the MSAI Obligations. MSAI waives presentment, demand and any other notice with respect to any of the MSAI Obligations and any defenses that MSAI may have with respect to any of the MSAI Obligations other than as set forth in the immediately preceding sentence. Notwithstanding anything to the contrary contained herein, the guarantee set forth in this Section 4.11 shall terminate upon the delivery of the Merger Consideration in accordance herewith.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the date first above written.

PURCHASER

MURRAY KENTUCKY ENERGY, INC.

By:_____
Name: Robert D. Moore
Title: Treasurer

MERGER SUB

WESTERN KENTUCKY MERGER SUB, LLC

By:_____
Name: Robert D. Moore
Title: Treasurer

THE COMPANY

WESTERN KENTUCKY COAL RESOURCES, LLC

By:_____
Name: Robert D. Moore
Title: Treasurer

MSAI

MURRAY SOUTH AMERICA, INC.

By:_____
Name: Robert D. Moore
Title: President