

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:)	Chapter 11
)	
WESTMORELAND COAL COMPANY, <i>et al.</i> , ¹)	Case No. 18-35672 (DRJ)
)	
Debtors.)	(Jointly Administered)
)	

**BIDDING PROCEDURES FOR THE SALE OF SUBSTANTIALLY ALL ASSETS OF
WESTMORELAND COAL COMPANY AND CERTAIN DEBTOR AFFILIATES**

On November 15, 2018, the United States Bankruptcy Court for the Southern District of Texas (the “Court”) entered the *Order (I) Authorizing Westmoreland Coal Company and Certain Debtor Affiliates to Perform Obligations Related to the Stalking Horse Bid, (II) Approving Bidding Procedures with Respect to Substantially All Assets, (III) Approving Contract Assumption and Assignment Procedures, (IV) Scheduling Bid Deadlines and an Auction, (V) Scheduling Hearings and Objection Deadlines with Respect to the Disclosure Statement and Plan Confirmation, and (VI) Approving the Form and Manner of Notice Thereof* [Docket No. 519] (the “Bidding Procedures Order”),² by which the Court approved the following procedures (the “Bidding Procedures”).

These Bidding Procedures set forth the process by which Westmoreland Coal Company and certain of its affiliates (collectively, the “WLB Debtors”)³ are authorized to conduct an auction (the “Auction”) for the sale of the WLB Debtors’ assets (including, for the avoidance of doubt, both Core Assets and any Non-Core Assets to the extent a third party has not agreed, prior to the effective date of the Plan (the “Effective Date”), to acquire such Non-Core Assets as a result of the Non-Core Asset Marketing Process (as defined below)) pursuant to a chapter 11 plan

¹ Due to the large number of debtors in these chapter 11 cases, for which joint administration has been granted, a complete list of the debtors and the last four digits of their tax identification, registration, or like numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ claims and noticing agent in these chapter 11 cases at www.donlinrecano.com/westmoreland. Westmoreland Coal Company’s service address for the purposes of these chapter 11 cases is 9540 South Maroon Circle, Suite 300, Englewood, Colorado 80112.

² All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Bidding Procedures Order.

³ The relief granted in the Bidding Procedures Order is solely limited to Westmoreland Coal Company and its Debtor affiliates, other than the WMLP Debtors (as defined herein) (collectively, the “WLB Debtors”). The “WMLP Debtors” means, collectively, Westmoreland Resource Partners GP, LLC, Westmoreland Resource Partners, LP, and its subsidiaries.

(the “Sale”).⁴

The WLB Debtors selected the bid (the “Stalking Horse Bid”) submitted by an entity formed on behalf of the WLB Debtors’ prepetition secured creditors (the “Stalking Horse Bidder”) after a closed bidding process. Having announced the Stalking Horse Bid, the WLB Debtors will now conduct a round of open bidding intended to obtain the highest or otherwise best bid for the WLB Debtors’ assets, culminating in an Auction.

Copies of the Bidding Procedures Order or other documents related thereto are available upon request to Donlin, Recano & Company, Inc. by calling (800) 499-8519 or visiting the WLB Debtors’ restructuring website at (www.donlinrecano.com/westmoreland).

I. Assets to be Auctioned.

These Bidding Procedures set forth the terms by which prospective bidders, if any, may qualify for and participate in an Auction, thereby competing to make the highest or otherwise best offer or combination of offers which in the aggregate will make the highest or otherwise best offer to purchase the WLB Debtors’ assets. The assets will be offered for sale in one or more combinations, and as a whole, through an Auction. The WLB Debtors, in consultation with the Consultation Parties, may consider bids from multiple bidders (including multiple bids submitted by the same bidder) for the assets in any combination. The Stalking Horse Bid referenced herein provides for the Stalking Horse Bidder’s acquisition of the Core Assets and agreement to accept any of the Non-Core Assets to the extent a third party has not agreed, prior to the Effective Date, to acquire such Non-Core Assets.

At the Auction, the WLB Debtors will solicit bids for substantially all of their assets, including any Non-Core Assets that have not been sold by the WLB Debtors prior to the Auction as a result of the Non-Core Asset Marketing Process.

II. Non-Core Asset Marketing Process.

Notably, the WLB Debtors have been marketing the Non-Core Assets for sale (the “Non-Core Asset Marketing Process”), including the Non-Core Mines listed on **Exhibit 1** to the Bidding Procedures Order. Any parties interested in purchasing such Non-Core Assets before the Auction should contact Centerview Partners LLC (“Centerview”), 31 West 52nd Street, 22nd Floor, New York, New York 10019, Attn.: Marc D. Puntus (mpuntus@centerview.com) and Steven W. Bremer (sbremer@centerview.com). For the avoidance of doubt, these Bidding Procedures do not apply to the Non-Core Asset Marketing Process. To the extent any Non-Core Assets are sold (or a binding agreement to sell such Non-Core Assets is entered into) pursuant to the Non-Core Asset Marketing Process prior to the date of the Auction, the applicable Non-Core Assets will not be part of the Auction; *provided*, that to the extent any Non-Core Assets are not sold by the WLB Debtors (or a binding agreement to sell such Non-Core Assets is not entered into) prior to the date

⁴ For the avoidance of doubt, these Bidding Procedures are subject to the terms and conditions contained in any orders entered by this Court authorizing the use of cash collateral and debtor in possession financing with respect to the WLB Debtors.

of the Auction, the applicable Non-Core Assets may be sold as part of the Auction.

III. Public Announcement of Auction.

As soon as reasonably practicable after entry of the Bidding Procedures Order, the WLB Debtors shall serve on the Notice Parties a notice of the Auction and Sale (the “Sale Notice”) pursuant to the terms of the Bidding Procedures Order. In addition, as soon as practicable after entry of the Bidding Procedures Order, the WLB Debtors will publish the Sale Notice, with any modifications necessary for ease of publication, once in *The New York Times (National Edition)* to provide notice to any other potential interested parties.

IV. Potential Bidder Requirements.

To participate in the bidding process or otherwise be considered for any purpose hereunder, a person or entity (other than the Stalking Horse Bidder) interested in purchasing one or more of the WLB Debtors’ assets (a “Potential Bidder”) must deliver or have previously delivered to the WLB Debtors, if determined to be necessary by the WLB Debtors in their reasonable discretion, the following documents:

- a. an executed confidentiality agreement (a “Confidentiality Agreement”) in form and substance acceptable to the WLB Debtors;
- b. preliminary proof by the Potential Bidder of its financial capacity to close the proposed transaction (including current audited or verified financial statements of, or verified financial commitments (“Financial Statements”) 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) as well as an overview of any recent transactions), the adequacy of which must be acceptable to the WLB Debtors;
- c. preliminary proof by the Potential Bidder of its ability to receive any and all necessary governmental, licensing, regulatory, and other approvals; and
- d. details regarding the ownership and capital structure of the Potential Bidder, including detail related to the Potential Bidder’s beneficial owners, ultimate beneficial owners, and controlling entities, and any of the principals, corporate officers, or other representatives that are authorized to appear for and act on behalf of the Potential Bidder with respect to the contemplated transaction.

The WLB Debtors, after consultation with the Consultation Parties, shall determine and notify each Potential Bidder as to whether such Potential Bidder has submitted acceptable preliminary documentation. Only those Potential Bidders that have submitted acceptable preliminary documentation (each, an “Acceptable Bidder”) to the reasonable satisfaction of the WLB Debtors and their advisors may submit bids to purchase any of the WLB Debtors’ assets. Each Prepetition Secured Party shall at all times be deemed an Acceptable Bidder.

V. Acceptable Bidder Requirements.

To participate in the Auction, an Acceptable Bidder (other than the Stalking Horse Bidder) must deliver to the WLB Debtors and their advisors an irrevocable offer for purchase of the applicable assets being bid on (the “Bid”), and shall meet the following criteria:

- a. **Purchased Assets and Assumed Liabilities:** Each Bid must clearly state which of the WLB Debtors’ assets the Acceptable Bidder seeks to acquire, and which liabilities of the applicable WLB Debtor the Acceptable Bidder agrees to assume;
- b. **Good Faith Deposit:** Each Bid, other than the Stalking Horse Bid, must be accompanied by a cash deposit in the amount of the lesser of (i) ten percent (10%) of the cash consideration of such bid (including, for Bids seeking to acquire substantially all of the Core Assets, the amount necessary to pay all accrued but unpaid principal, interest, fees, expenses, and other costs under or on account of the DIP Facility) and (ii) \$20 million, submitted by wire transfer of immediately available funds to an escrow account to be identified and established by the WLB Debtors (the “Good Faith Deposit”);
- c. **Purchase Price:** Each Bid must clearly set forth the purchase price to be paid, including cash and non-cash components, if any, including any assumption of liabilities (the “Purchase Price”). Each Bid for a combination of assets must (i) provide a breakdown of the share of the Purchase Price allocable to each of the assets included in the Bid, (ii) state whether the Bid is conditioned upon the Acceptable Bidder being the Successful Bidder for any of the other assets included in the Bid and, if so, which assets, and (iii) state whether the Acceptable Bidder is willing to purchase any of the assets included in the Bid individually, and if so, the price the Acceptable Bidder would pay for each such asset;
- d. **Minimum Bid:**
 - (i) At a minimum, each Bid seeking to acquire all of the WLB Debtors’ assets must have a Purchase Price that in the WLB Debtors’ reasonable business judgment, after consultation with the Consultation Parties, has a value equal to or greater than the aggregate cash consideration, assumed liabilities, and other non-cash consideration contemplated by the Stalking Horse Bid,⁵ including, unless otherwise agreed to by the WLB Debtors and Required Consenting Stakeholders (as defined in the RSA), the agreement to purchase the Non-Core Assets to the extent a third party has not agreed, prior to the Effective Date, to acquire such Non-Core Assets (as more fully set forth in the applicable definitive documentation) plus (i) cash consideration in the amount of all accrued but unpaid principal, interest, fees, expenses, and other costs under or on account of the DIP Facility, plus (ii) \$2.5 million in cash or cash equivalents (collectively, the

⁵ The Stalking Horse Bid will include a credit bid in the amount of fifty-five percent (55%) of the amount of the First Lien Claims (as defined in the Plan) as of the Petition Date.

“Initial Overbid”); or

- (ii) At a minimum, each Bid seeking to acquire individual assets or combinations of assets that are less than all of the WLB Debtors’ assets (each a “Partial Bid”) must have a Purchase Price that in the WLB Debtors’ reasonable business judgment, after consultation with the Consultation Parties, has a value, individually or in conjunction with one or more other Bids, that satisfies the criteria for being a Qualified Bid (as defined below);
- e. **Markup of the APA:** Each Acceptable Bidder must provide an executed purchase agreement as well as a redline of such agreement marked to reflect the amendments and modifications made to the form of the asset purchase agreement with respect to the Stalking Horse Bid (the “Stalking Horse Purchase Agreement”) provided by the WLB Debtors to Potential Bidders;
- f. **Same or Better Terms; Bid Documents:** Except as otherwise provided in the Bidding Procedures, each Bid must be, in the WLB Debtors’ reasonable business judgment, after consultation with the Consultation Parties, substantially on the same or better terms than the terms of the Stalking Horse Purchase Agreement. Each Bid must include duly executed, ancillary transaction documents necessary to effectuate the transactions contemplated in the Bid (such documents, the “Bid Documents”);
- g. **Employee Obligations:** Each Bid must indicate whether the Acceptable Bidder intends to hire all employees who are primarily employed at the assets included in the Bid. Each Bid must further expressly propose a treatment of the WLB Debtors’ prepetition collective bargaining agreements (the “CBAs”), pension obligations and other post-employment benefits (collectively, the “Employee Obligations”);
- h. **Committed Financing:** Each Bid must include committed financing, documented to the WLB Debtors’ reasonable satisfaction, that demonstrates the Acceptable Bidder has received sufficient debt and equity funding commitments to satisfy such Acceptable Bidder’s Purchase Price and other obligations under its Bid, including the identity and contact information of the specific person(s) or entity(s) responsible for such committed financing whom Centerview and Kirkland & Ellis LLP should contact regarding such committed financing. Such funding commitment shall not be subject to any internal approval, syndication requirements, diligence or credit committee approvals, and shall have covenants and conditions reasonably acceptable to the WLB Debtors;
- i. **Pro Forma Capital Structure:** Each Bid must include a description of the Bidder’s pro forma capital structure;
- j. **Contingencies; No Financing or Diligence Outs:** Any Bid shall not be conditioned on the obtaining or the sufficiency of financing, any internal approval, or on the outcome or review of due diligence, but may be subject to the accuracy at the closing of the specified representations and warranties or the satisfaction at the

closing of specified conditions, which shall not be more burdensome, in the WLB Debtors' reasonable business judgment, after consultation with the Consultation Parties, than those contemplated by the Stalking Horse Bid;

- k. **As-Is, Where-Is:** Each Bid must include a written acknowledgement and representation that the Acceptable Bidder: (i) has had an opportunity to conduct any and all due diligence prior to making its offer; (ii) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the assets in making its Bid; and (iii) 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 completeness of any information provided in connection therewith, except as expressly stated in the Acceptable Bidder's proposed Asset Purchase Agreement;
- l. **Authorization:** Each Bid must contain evidence that the Acceptable Bidder has obtained authorization or approval from its shareholders and/or its board of managers or directors, as applicable, with respect to the submission of its Bid and the consummation of the transactions contemplated in such Bid;
- m. **Adequate Assurance of Future Performance:** Each Bid must (i) identify the executory contracts and unexpired leases to be assumed and assigned in connection with the proposed Sale, (ii) provide for the payment of all cure costs related to such executory contracts and unexpired leases by the Acceptable Bidder and (iii) demonstrate, in the WLB Debtors' and Centerview's reasonable business judgment, after consultation with the Consultation Parties, that the Acceptable Bidder can provide adequate assurance of future performance under all such executory contracts and unexpired leases;
- n. **Transfer of Mining Permits/Assumption of Reclamation Obligations:** Each Bid, including the Stalking Horse Bid, must (i) provide that the 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 Bidder's ability to satisfy the conditions set forth in (i) of this paragraph (including verification that the 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 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 Bidder is a "qualified buyer" (as such term is used in the surety industry). The applicable Bidder shall also provide all such evidence submitted (subject to any applicable confidentiality agreements that may be entered into) to surety providers of the relevant mines to be acquired, and the WLB Debtors shall consult with such surety companies with respect to such Bidder's ability to obtain or take transfer of

the permits and obtain assignment of or replace surety bonds, each as required by the applicable regulators;

- o. **Government Approvals:** Each Bid, including the Stalking Horse Bid, must include a description of all governmental, licensing, regulatory, or other approvals or consents that are required to close the proposed Sale, together with evidence satisfactory to the WLB Debtors, after consultation with the Consultation Parties, of the ability to obtain such consents or approvals in a timely manner, as well as a description of any material contingencies or other conditions that will be imposed upon, or that will otherwise apply to, the obtainment or effectiveness of any such consents or approvals;
- p. **Government Approvals Timeframe:** Each Bid must set forth an estimated timeframe for obtaining any required internal, governmental, licensing, regulatory or other approvals or consents for consummating any proposed Sale;
- q. **Executory Contracts and Leases:** Each Bid must identify with particularity each and every condition to closing, including the executory contracts and unexpired leases for which assumption and assignment is required;
- r. **Compliance with Bankruptcy Code and Non-Bankruptcy Law; Acknowledgment:** Each Bid must comply in all respects with the Bankruptcy Code and any applicable non-bankruptcy law. Each Bid must also include a written acknowledgment that the Bidder agrees to all of the terms of the Sale set forth in these Bidding Procedures;
- s. **Irrevocable:** Each Bid must remain irrevocable until the Court enters the Confirmation Order (as defined below) approving the Sale and the Successful Bid (as defined below); *provided* that 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 pending entry of the Confirmation Order.

In the event a Bid is chosen as the Back-Up Bid (as defined below), it must remain irrevocable until the WLB Debtors and the Successful Bidder consummate the applicable Sale; *provided*, that if the Stalking Horse Bid is selected as the Back-Up Bid, such bid must remain irrevocable until the Outside Date (as defined in the RSA) or as otherwise agreed to by the WLB Debtors and the Required Consenting Stakeholders.

- t. **Letters of Credit:** Any Bid must provide that the applicable bidder agrees that the obligations of any non-Debtor affiliate of the WLB Debtors (and, for the avoidance of doubt, not the WMLP Debtors) with regard to any letters of credit issued on behalf of any WLB Debtor with respect to the applicable purchased assets will either be assumed, replaced, or continued, as applicable.

In addition to the above, each Acceptable Bidder shall provide the following information:

- u. **Identity:** Each Bid must fully disclose the identity of each entity and each entity's shareholders, partners, investors and ultimate controlling entities that will be bidding for or purchasing the applicable assets or otherwise participating in connection with such Bid, and the complete terms of any such participation, along with sufficient evidence that the Acceptable Bidder is legally empowered to complete the transactions on the terms contemplated by the parties. Each Bid must also include contact information for the specific person(s) whom Centerview and Kirkland & Ellis LLP should contact regarding such Bid; and
- v. **Expenses:** Each Bid, except for the Stalking Horse Bid, shall not seek or request any break-up fee, transaction fee, termination fee, expense reimbursement, or any similar type of payment or reimbursement.

Only Bids fulfilling all of the preceding requirements contained in this section may, at the WLB Debtors' reasonable discretion, after consultation with the Consultation Parties, be deemed to be "Qualified Bids," and only those parties submitting Qualified Bids may, at the WLB Debtors' reasonable discretion, be deemed to be "Qualified Bidders."

Within one business day after the Bid Deadline, the WLB Debtors after consultation with the Consultation Parties, shall determine which Acceptable Bidders are Qualified Bidders and will notify the Acceptable Bidders whether Bids submitted constitute Qualified Bids, which will enable such Qualified Bidders to participate in the Auction. Any Bid that is not deemed a Qualified Bid shall not be considered by the WLB Debtors; *provided*, however, that if the WLB Debtors receive a Bid prior to the Bid Deadline (as defined below) that does not satisfy the requirements of a Qualified Bid, the WLB Debtors may, after consultation with the Consultation Parties, provide the Acceptable Bidder with the opportunity to remedy any deficiencies prior to the Auction. The Stalking Horse Bidder shall be deemed to be a Qualified Bidder, the Stalking Horse Bid shall be deemed a Qualified Bid, and the Stalking Horse Bidder may participate in the Auction with respect to the WLB Debtors' assets.

Notwithstanding the separate Non-Core Asset Marketing Process, to the extent that a Bid includes any Non-Core Assets for which the WLB Debtors have not yet entered into definitive transaction documentation to effectuate a sale, the WLB Debtors, after consultation with the Consultation Parties, may select any Bid for such Non-Core Assets as a Successful Bid (as defined below) following the Auction.

To the extent that a Bid includes any Non-Core Assets for which the WLB Debtors have entered into definitive transaction documentation to effectuate a sale but such sale has not been completed at the time of the Auction, the WLB Debtors, after consultation with the Consultation Parties, may select any Bid for such Non-Core Assets as a Back-Up Bid following the Auction. The WLB Debtors will inform such Acceptable Bidder at the earliest convenience after submission of the Bid of its selection as a Back-Up Bid. For the avoidance of doubt, the foregoing shall not affect any Core Assets included in such Bid.

VI. Obtaining Due Diligence Access.

Only Acceptable Bidders, including the Stalking Horse Bidder, shall be eligible to receive due diligence information and access to the WLB Debtors' electronic data room and to additional non-public information regarding the WLB Debtors. *Other than the Prepetition Secured Parties exercising their right to credit bid any of their respective secured claims under applicable law, no Acceptable Bidder will be permitted to conduct any due diligence without entry into a Confidentiality Agreement.* All due diligence requests must be directed to Centerview. The WLB 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, and the WLB Debtors shall post substantially all written due diligence provided to any Acceptable Bidder to the WLB Debtors' electronic data room. Acceptable Bidders will not, directly or indirectly, contact or initiate or engage in discussions in respect of matters relating to the WLB Debtors or a potential transaction with any customer, supplier, or contractual counterparty of the WLB Debtors without the prior written consent of the WLB Debtors. The due diligence period will end on the Bid Deadline (as defined herein) and subsequent to the Bid Deadline the WLB Debtors shall have no obligation to furnish any due diligence information. For the avoidance of doubt, Acceptable Bidders may engage in discussions with the Committee's advisors (subject to any applicable confidentiality agreement or protective order) with the prior consent and/or participation of the WLB Debtors and prior notice to the Stalking Horse Bidder.

In connection with the provision of due diligence information to Acceptable Bidders, the WLB Debtors shall not furnish any confidential information relating to the WLB Debtors or a potential transaction to any person except an Acceptable Bidder or such Acceptable Bidder's duly authorized representatives to the extent provided in an applicable Confidentiality Agreement.

The WLB Debtors and their advisors shall coordinate all reasonable requests for additional information and due diligence access from Acceptable Bidders; *provided* that the WLB Debtors may decline to provide such information to Acceptable Bidders who, in the WLB Debtors' reasonable business judgment, have not established that such Acceptable Bidders intend in good faith to, or have the capacity to, consummate any Sale. For any Bidder who is a competitor or customer of the WLB Debtors or is affiliated with any competitors or customers of the WLB Debtors, the WLB Debtors reserve the right to withhold or modify any diligence materials that the WLB Debtors, in their sole discretion, determine are business-sensitive or otherwise inappropriate for disclosure to such bidder.

A. Communications with Qualified Bidders.

Notwithstanding anything to the contrary in these Bidding Procedures, all substantive direct communications, including any diligence requests, with Qualified Bidders shall be through Centerview.

B. Due Diligence from Qualified Bidders.

Each Qualified Bidder shall comply with all reasonable requests for additional information and due diligence access requested by the WLB Debtors or their advisors regarding the ability of such Qualified Bidder to consummate its contemplated transaction. Failure by a Qualified Bidder

to comply with such reasonable requests for additional information and due diligence access may be a basis for the WLB Debtors to determine that such bidder is no longer a Qualified Bidder or that a bid made by such bidder is not a Qualified Bid.

Centerview Partners LLC, 31 West 52nd Street, 22nd Floor, New York, New York 10019, Attn.: Johannes Preis (jpreis@centerview.com), shall coordinate all requests for additional information and due diligence access on behalf of the WLB Debtors.

VII. Indications of Interest.

The WLB Debtors reserve the right to require Acceptable Bidders to submit written indications of interest prior to the Bid Deadline specifying, among other things, the assets proposed to be acquired, the amount and type of consideration to be offered, and any other material terms to be included in a bid by such party. If an Acceptable Bidder fails to comply with any such request by the WLB Debtors, the WLB Debtors, after consultation with the Consultation Parties, may deny such Acceptable Bidder further diligence access or deny such Acceptable Bidder further participation in the Auction process. The WLB Debtors also reserve the right to exclude any Acceptable Bidder (prior to its submission of a Qualified Bid) from continuing in the Auction process if the WLB Debtors determine, after consultation with the Consultation Parties, that the consideration proposed to be paid by such Acceptable Bidder is insufficient.

VIII. Bid Deadline.

Binding Bids must be received by (1) the WLB Debtors' counsel, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn.: Stephen E. Hessler, P.C. (stephen.hessler@kirkland.com), and Kirkland & Ellis LLP, 300 North LaSalle, Chicago, Illinois 60654, Attn.: Gregory F. Pesce (gregory.pesce@kirkland.com) and Timothy R. Bow (timothy.bow@kirkland.com) and (2) the WLB Debtors' financial advisor, Centerview Partners LLC, 31 West 52nd Street, 22nd Floor, New York, New York 10019, Attn.: Marc D. Puntus (mpuntus@centerview.com) and Steven W. Bremer (sbremer@centerview.com), in each case so as to be **actually received** no later than 4:00 p.m. (prevailing Central Time) on January 15, 2019 (the "**Bid Deadline**").

IX. Evaluation of Qualified Bids.

The WLB Debtors shall evaluate Qualified Bids and identify the Qualified Bid that is, in the WLB Debtors' judgment, after consultation with the Consultation Parties, the highest or otherwise best Qualified Bid or combination of Qualified Bids for the WLB Debtors' assets (the "**Starting Bid**"). When determining the highest or otherwise best Qualified Bid, as compared to other Qualified Bids, the WLB Debtors may, in consultation with the Consultation Parties, consider the following factors in addition to any other factors that the WLB Debtors deem appropriate: (a) the amount and nature of the total consideration; (b) the likelihood of the Qualified Bidder's ability to close a transaction and the timing thereof; (c) the net economic effect of any changes to the value to be received by each of the WLB Debtors' estates from the transaction contemplated by the Bid Documents; (d) the tax consequences of such Qualified Bid; and (e) the proposed treatment of the Employee Obligations. Three business days prior to the date of the Auction, the WLB Debtors shall notify the Stalking Horse Bidder and all Qualified Bidders as to

which Qualified Bid is the Starting Bid for the Auction with respect to the applicable assets. At such time, the WLB Debtors shall also distribute copies of the Starting Bid to the Stalking Horse Bidder and each Qualified Bidder.

X. No Qualified Bids.

If no Qualified Bids other than the Stalking Horse Bid are received by the Bid Deadline, then the WLB Debtors may cancel the Auction, and may decide, in the WLB Debtors' reasonable business judgment, to designate the Stalking Horse Bid as the Successful Bid, and pursue entry of the Confirmation Order approving a Sale of the WLB Debtors' assets to the Stalking Horse Bidder pursuant to the Stalking Horse Purchase Agreement.

XI. Auction.

If one or more Qualified Bids (other than the Stalking Horse Bid) are received by the Bid Deadline with respect to any applicable assets, then the WLB Debtors shall conduct the Auction with respect to such assets. The Auction for each applicable asset shall commence on **January 22, 2019, at 10:00 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 WLB Debtors determine, after consultation with the Consultation Parties and subject to the consent of the Required Consenting Stakeholders (as defined in the RSA) and the Required Lenders (as defined in the DIP Credit Agreement), in which case the WLB Debtors shall timely notify the Stalking Horse Bidder and all other Qualified Bidders of such later time or other place, and file a notice of the change on the Court's docket for these chapter 11 cases.

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

- a. except as otherwise provided herein, the Auction will be conducted openly;
- b. only Qualified Bidders shall be entitled to bid at the Auction;
- c. the Qualified Bidders shall appear at the Auction in person or through duly authorized representatives;
- d. only a reasonable number of authorized representatives of the WLB Debtors, the Prepetition Secured Parties, the statutory committee appointed on behalf of general unsecured creditors in the WLB Debtors' chapter 11 cases, and each Qualified Bidder, and their respective advisors, shall be permitted to attend the Auction;
- e. bidding shall begin with any applicable Starting Bid;
- f. subsequent bids (each an "Overbid") shall be made in minimum increments of \$1,000,000, provided that the Stalking Horse Bidder may credit bid any remaining amounts of its secured claims in connection with an Overbid;
- g. during the course of the Auction, the WLB Debtors shall, after submission of each Overbid, promptly inform each Qualified Bidder of the terms of the previous bids

and inform each Qualified Bidder which Overbid(s) reflect, in the WLB Debtors' view, after consultation with the Consultation Parties, the highest or otherwise best bid(s) for the applicable assets;

- h. the Auction will be transcribed to ensure an accurate recording of the bidding at the Auction;
- i. each Qualified Bidder will be required to confirm on the record that it has not engaged in any collusion with respect to the bidding or any Sale;
- j. each Qualified Bidder will be required to confirm that its bid is a good faith, bona fide offer and it intends to consummate the proposed transaction if selected as the Successful Bid;
- k. the Court and the WLB Debtors will not consider bids made after the Auction has been closed; and
- l. notwithstanding anything herein to the contrary, the WLB Debtors, after consultation with the Consultation Parties and subject to the consent of the Required Consenting Stakeholders (as defined in the RSA) and the Required Lenders (as defined in the DIP Credit Agreement), may at any time choose to cancel the Auction or adjourn the Auction by either filing a notice on the docket of the Court or making a statement in open court.

At the Auction, the WLB Debtors shall have the right to, after consultation with the Consultation Parties, adopt and announce additional Auction Procedures that are not inconsistent with the existing Auction Procedures, including, for example, other Auction Procedures necessary for the WLB Debtors to consider any bids to purchase fewer than all of the WLB Debtors' assets and for the WLB Debtors to exercise their right to move to "blind" bidding for Qualified Bidders including cash in their bids.

XII. Acceptance of the Successful Bid.

The Auction shall continue until there is only one Qualified Bid or a combination of Qualified Bids that the WLB Debtors, in consultation with the Consultation Parties, determine, in their reasonable business judgment and in a manner consistent with the exercise of their fiduciary duties and outlined below in further detail, is the highest or otherwise best bid to purchase any or all of the WLB Debtors' assets (each, a "Successful Bid"), and that further bidding is unlikely to result in a different Successful Bid or Successful Bids that would be acceptable to the WLB Debtors, at which point, the Auction will be closed. When determining the highest or otherwise best Qualified Bid, as compared to other Qualified Bids, the WLB Debtors may, in consultation with the Consultation Parties, consider the following factors in addition to any other factors that the WLB Debtors deem appropriate: (a) the amount and nature of the total consideration; (b) the likelihood of the Qualified Bidder's ability to close a transaction and the timing thereof; (c) the net economic effect of any changes to the value to be received by each of the WLB Debtors' estates from the transaction contemplated by the Bid Documents; (d) the tax consequences of such Qualified Bid; and (e) the proposed treatment of the Employee Obligations.

Any Qualified Bidder that submits a Successful Bid will be deemed a “Successful Bidder” with respect to the applicable assets.

Each Successful Bidder and the WLB Debtors shall, as soon as commercially reasonable and practicable, complete and sign all agreements, contracts, instruments, or other documents evidencing and containing the terms upon which each such Successful Bid was made.

Upon the selection of the Successful Bidder(s), to the extent that the WLB Debtors and a Successful Bidder determine that the closing of the Sale to the Successful Bidder may occur prior to the transfer of any of the WLB Debtors’ existing mining permits that are being transferred to such Successful Bidder, the WLB Debtors and the Successful Bidder will consult with the WLB Debtors’ surety providers at the relevant mine(s) being acquired by such Successful Bidder regarding entering into an agreement that would allow the Successful Bidder to conduct business at such mine(s) under the WLB Debtors’ existing mining permits, pending the transfer of the relevant mining permits to the Successful Bidder. The WLB Debtors’ surety providers have indicated that they will require each such Successful Bidder to enter into an agreement with the applicable surety provider, which agreements shall provide, among other things, that the Successful Bidder (a) is liable for correcting any violations or defaults relating to the mine(s) with the pending permit transfers, (b) indemnifies the WLB Debtors and their surety providers in the event of any default, claim, or loss that occurs at the mine(s) with the pending permit transfers while the permit transfers are pending, and (c) agrees to such other terms and provisions as may be required by such surety providers and such Successful Bidder in their sole and absolute discretion, including, without limitation, terms requiring the Successful Bidder to post collateral for such surety providers’ bonds relating to such permits pending transfer; provided that nothing in this paragraph alters any legal requirements under applicable police and regulatory law. Nothing herein shall be deemed to require any party to enter into any such agreement or any surety provider to consent to any operations under a permit relating to any surety bond.

The WLB Debtors shall incorporate the results of the Auction and any Successful Bid into the chapter 11 plan that is submitted to the Court for confirmation (as such plan may be amended, modified, or supplemented, the “Plan,” the order confirming the Plan, the “Confirmation Order,” and the hearing to consider confirmation of the Plan, the “Confirmation Hearing”).

XIII. Designation of Back-Up Bidder.

The Qualified Bidder with the second highest or otherwise best bid or combination of bids (the “Back-Up Bid”) to purchase any or all of the applicable assets (the “Back-Up Bidder”) will be determined by the WLB Debtors, after consultation with the Consultation Parties, at the conclusion of the Auction and will be announced at that time to all the Qualified Bidders participating in the Auction. If for any reason a Successful Bidder fails to consummate the purchase of such assets within the time permitted after the entry of the Confirmation Order, then the Back-Up Bidder will, after the WLB Debtors consult with the Consultation Parties for a period not to exceed two business days absent an extension by the WLB Debtors, automatically be deemed to have submitted the Successful Bid for such assets, and the Back-Up Bidder shall be deemed a Successful Bidder for such assets and shall be required to consummate any Sale with the WLB Debtors as soon as is commercially practicable without further order of the Court, provided that the WLB Debtors shall file a notice with the Court.

XIV. Approval of Sale Transactions.

The WLB Debtors, in consultation with the Consultation Parties, will present the results of the Auction to the Court for approval at the Confirmation Hearing, at which certain findings will be sought from the Court regarding the Auction, including, among other things, that: (1) the Auction was conducted, and the Successful Bidder was selected, in accordance with the Bidding Procedures; (2) the Auction was fair in substance and procedure; (3) the Successful Bid was a Qualified Bid as defined in the Bidding Procedures; and (4) consummation of any Sale as contemplated by the Successful Bid in the Auction will provide the highest or otherwise best offer for the WLB Debtors and the WLB Debtors' assets, and is in the best interests of the WLB Debtors and their estates.

The Confirmation Hearing is presently scheduled to commence on **February 13, 2019**, at **10:00 a.m. (prevailing Central Time)**, or as soon thereafter as counsel may be heard, before the Honorable David R. Jones, United States Bankruptcy Court for the Southern District of Texas.

XV. Return of Good Faith Deposit.

The Good Faith Deposit of a Successful Bidder shall, upon consummation of any Sale, be credited to the purchase price paid for the applicable assets. If a Successful Bidder fails to consummate any Sale, then the Good Faith Deposit shall be forfeited to, and retained irrevocably by, the WLB Debtors, and all parties in interest, and the WLB Debtors specifically, reserve the right to seek all available damages from the defaulting Successful Bidder.

The Good Faith Deposit of any Qualified Bidders that are not Successful Bidders or Back-Up Bidders will be returned within 5 business days after the Auction or upon the permanent withdrawal of the proposed Sale, and the Good Faith Deposit of any Back-Up Bidders will be returned within 5 business days after the consummation of any Sale or upon the permanent withdrawal of the proposed Sale.

XVI. Reservation of Rights.

The WLB Debtors reserve their rights to, after consultation with the Consultation Parties and subject to the RSA and the orders approving the WLB Debtors' postpetition financing facility, modify these Bidding Procedures in their reasonable business judgment and in a manner consistent with the exercise of their fiduciary duties, in any manner that will best promote the goals of the bidding process, or impose, at or before the Auction, additional customary terms and conditions on the sale of the WLB Debtors' assets, including, without limitation: (1) extending the deadlines set forth in these Bidding Procedures; (2) after consultation with the Consultation Parties, adjourning the Auction without further notice; (3) adding procedural rules that are reasonably necessary or advisable under the circumstances for conducting the Auction; (4) canceling the Auction; (5) rejecting any or all Bids or Qualified Bids; and (6) adjusting the applicable minimum overbid increment, including by requesting that Qualified Bidders submit last or final bids on a "blind" basis. For the avoidance of doubt, the WLB Debtors reserve the right at any point prior to the selection of the Successful Bidder to, after consultation with the Consultation Parties, terminate the Sale processes contemplated hereunder with respect to any or all of the WLB Debtors' assets and seek to sell any or all assets pursuant to section 363(b) of the Bankruptcy Code.

XVII. Fiduciary Out.

Notwithstanding anything to the contrary in these Bidding Procedures and subject in all respects to the terms of the RSA, nothing in these Bidding Procedures or the Bidding Procedures Order shall require a WLB Debtor or the board of directors, board of managers, or similar governing body of a WLB Debtor, after consulting with counsel, to take any action or to refrain from taking any action related to any sale transaction to the extent taking or failing to take such action would be inconsistent with applicable law or its fiduciary obligations under applicable law; *provided*, however, that the WLB Debtors shall provide the Consultation Parties with notice of such action or inaction within two (2) Business Days of such action or inaction. If, at the Auction, the WLB Debtors exercise the foregoing right to take any action or refrain from taking any action to the extent failing to do so would be inconsistent with applicable law or their fiduciary obligations under applicable law, the WLB Debtors shall provide the Consultation Parties with notice of such action or inaction as soon as practicable.

Further, notwithstanding anything to the contrary in these Bidding Procedures and subject in all respects to the terms of the RSA, through the date of the Auction, the WLB Debtors and their respective directors, officers, employees, investment bankers, attorneys, accountants, consultants, and other advisors or representatives shall have the right to: (a) consider, respond to, and facilitate alternate proposals for sales or other restructuring transactions involving any or all of the WLB Debtors' assets (each an "Alternate Proposal"); (b) provide access to non-public information concerning the WLB Debtors to any entity or enter into confidentiality agreements or nondisclosure agreements with any entity; (c) maintain or continue discussions or negotiations with respect to Alternate Proposals; (d) otherwise cooperate with, assist, participate in, or facilitate any inquiries, proposals, discussions, or negotiation of Alternate Proposals; and (e) enter into or continue discussions or negotiations with holders of claims against or equity interests in a WLB Debtor (including any Consenting Stakeholder (as defined in the RSA)), any other party in interest in these chapter 11 cases (including any official committee and the United States Trustee), or any other entity regarding Alternate Proposals; *provided*, however, that notwithstanding anything to the contrary herein, if the WLB Debtors receive a proposal or expression of interest (orally or in writing) from a third party regarding an Alternate Proposal, the WLB Debtors shall provide counsel to the Consenting Stakeholders with such Alternate Proposal within one (1) Business Day, including the identity of the party or parties making such proposal or expression of interest.

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