IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	Chapter 11
Westmoreland Coal Company, et al.,[1]	Case No. 18-35672 (DRJ)
Debtors.	(Jointly Administered)

JOINT EXPEDITED MOTION OF THE WLB DEBTORS AND THE WMLP DEBTORS FOR ENTRY OF AN ORDER (I) APPROVING THE SALE OF (A) SUBSTANTIALLY ALL OF THE ASSETS OF OXFORD MINING COMPANY, LLC, AND CERTAIN OF ITS SUBSIDIARIES AND (B) THE BUCKINGHAM MINE, (II) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION THEREWITH, AND (III) GRANTING RELATED RELIEF, INCLUDING APPROVAL OF THE RELATED SALE PROCESS

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

EXPEDITED RELIEF HAS BEEN REQUESTED. IF THE COURT CONSIDERS THE MOTION ON AN EXPEDITED BASIS, THEN YOU WILL HAVE LESS THAN 21 DAYS TO ANSWER. IF YOU OBJECT TO THE REQUESTED RELIEF OR IF YOU BELIEVE THAT THE EXPEDITED CONSIDERATION IS NOT WARRANTED, YOU SHOULD FILE AN IMMEDIATE RESPONSE.

A HEARING WILL BE HELD ON THIS MATTER ON FEBRUARY 4, 2019, AT 9:00 A.M. (PREVAILING CENTRAL TIME) BEFORE THE HONORABLE DAVID R. JONES, 515 RUSK STREET, COURTROOM 400, HOUSTON, TEXAS 77002.

EXPEDITED RELIEF IS NEEDED ON OR BEFORE FEBRUARY 4, 2019.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY

[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.

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Westmoreland Coal Company and certain of its affiliates, as debtors and debtors in possession in the above captioned cases (collectively, the "WLB Debtors")[2] and the WMLP Debtors, also as debtors and debtors in possession in the above captioned cases, hereby move, on an expedited basis (this "Expedited Motion") pursuant to sections 105, 363, 365 and 503(b) of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 5 and Exhibit C of the United States Bankruptcy Court for the Southern District of Texas Procedures for Complex Chapter 11 Cases (the "Complex Case Procedures"), for the entry of an order (the "Sale Order"), attached as Exhibit A hereto:

(a) authorizing the sale (the "Sale Transactions") of (i) substantially all of the assets of Debtor Oxford Mining Company, LLC and the assets of each of its subsidiaries other than the assets of Debtor Westmoreland Kemmerer Fee Coal Holdings, LLC (Debtor Oxford Mining Company, LLC and each of its subsidiaries other than Debtor Westmoreland Kemmerer Fee Coal Holdings, LLC are referred to herein as the "Oxford Sellers") (including certain executory contracts and unexpired leases) (the "Oxford Assets") and (ii) Debtor Buckingham Coal Company, LLC's (the "Buckingham Seller" and with the Oxford Sellers, the "Sellers") active thermal coal mine located in Perry County, Ohio and substantially all related assets (including certain executory contracts and unexpired leases) (the "Buckingham Mine" and, collectively with the Oxford Assets, the "Assets") to the Stalking Horse Bidder (as defined below) (or a bidder that provides a higher and better offer), free and clear of all liens, claims and encumbrances, except for certain assumed liabilities;

(b) approving, and ratifying the Debtors' (i) implementation of the bidding and sale procedures attached as Exhibit B hereto (the "Bidding Procedures") and (ii) use of the form and manner of notice attached hereto as Exhibit C (the "Auction and Sale Notice") related to the dates of the auction, if any (the "Auction") and sale hearing, and Exhibit D (the "Publication Notice") for publication of the same;

(c) (i) authorizing the assumption and assignment of executory contracts and unexpired leases (the "Executory Contracts") in connection with such Sale

[2] The term "WLB Debtors" does not include Westmoreland Resource Partners, LP ("WMLP") or their subsidiaries (together with WMLP, the "WMLP Debtors" and, collectively with the WLB Debtors, the "Debtors").

Transactions and (ii) approving the Debtors' use of the form and manner of individualized notice of the proposed assumption and assignment of Executory Contracts utilized in connection therewith in the form attached hereto as Exhibit E (the "Assumption/Assignment Notice");

(d) authorizing the WMLP Debtors to pay a customary termination payment (the "Termination Payment") pursuant to the terms of the Stalking-Horse Asset Purchase Agreement (the "Oxford APA") by and among the Oxford Sellers and Merida Natural Resources, LLC (the "Oxford Stalking Horse Bidder"), a copy of which is attached hereto as Exhibit F;

(e) approving (i) the Oxford APA and (ii) the Asset Purchase Agreement by and among Buckingham Coal Company, LLC and WCC Land Holding Company, LLC (the "Buckingham Sellers") and Bayou Coal Partners, LLC and Merida Natural Resources, LLC (together, the "New Buckingham Bidder," and together with the Oxford Stalking Horse Bidder, the "Stalking Horse Bidder"), which contemplates the sale of the Buckingham Mine and substantially all related assets and is attached hereto as Exhibit G (the "New Buckingham APA," and together with the Oxford APA, the "APAs"); and

(f) granting such other relief as is necessary or advisable related to the foregoing.

In support of this Expedited Motion, the WLB Debtors and the WMLP Debtors incorporate the statements contained in the First Day Declaration (as defined below), and testimony to be presented to the Court, and further respectfully represent as follows:

Preliminary Statement

1. Both the WMLP Debtors and the WLB Debtors own mining operations in Ohio. The WLB Debtors own the Buckingham Mine, and the WMLP Debtors own four active mining complexes in Ohio, comprising thirteen active mines. The WLB Debtors and the WMLP Debtors have been marketing their respective assets, including their Ohio mines, separately and in parallel. Those efforts eventually led to the Debtors receiving a combined offer for all their Ohio mines (and one in Kentucky) this month. Competition between two potential buyers for the Assets followed, which drove up the consideration the Debtors will receive under the APAs. However, prior to this month's competition for the Assets, the market showed limited interest therein.

2. In December 2018, following months of conducting a marketing process for the sale of the Buckingham Mine, the WLB Debtors determined that a bid made by an entity affiliated with a former director of WMLP, Charles C. Ungurean,[3] was the highest, the best – and the only – viable proposal to acquire the Buckingham Mine that included cash consideration. Given the amount of consideration being offered, and the nature of the marketing process to date, on December 21, 2018, the WLB Debtors filed their *Motion for Entry of an Order Approving the Sale of the Buckingham Mine to CCU Coal and Construction LLC Free and Clear of Liens, Claims, Encumbrances, and Interests* (Docket No. 875) (the "Initial Buckingham Sale Motion"),[4] which sought Court approval of a private sale of the Buckingham Mine to the Original Buckingham Purchaser.

3. The Initial Buckingham Sale Motion not only contemplated the sale of the Buckingham Mine, via the purchase agreement attached as Exhibit 1 to Exhibit A to the Initial Buckingham Sale Motion (the "Original Buckingham APA"), but also contemplated the Oxford Acquirer (as defined in the Initial Buckingham Sale Motion) having an option to sell the Oxford Assets (the "Oxford Option") to the Original Buckingham Purchaser if the Oxford Acquirer makes a payment to the Original Buckingham Purchaser of up to $20 million dollars. See Original Buckingham APA, at § 3.3. The Oxford Assets have significant attendant reclamation liabilities that could have led the market to determine that the Oxford Assets had negative value. The Oxford Option allowed the marketing process for the Oxford Assets to continue while creating a floor of negative $20 million for their market value.

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[3] Such entity, the "Original Buckingham Purchaser."

[4] The Initial Buckingham Motion and all attachments thereto are fully incorporated by reference into this Expedited Motion.

4. As of the filing of the Initial Buckingham Sale Motion, the WLB Debtors believed that there was a low probability that a competing bidder would emerge to make a higher or better offer for the Buckingham Mine. See Initial Buckingham Sale Motion, at ¶ 22. However, in response to the Initial Buckingham Sale Motion, the Stalking Horse Bidder, with whom the WLB Debtors and the WMLP Debtors had been in continued dialogue throughout the marketing process, reached out to the WLB Debtors and the WMLP Debtors and indicated its desire to submit a bid for ***all*** of the Assets – including the Buckingham Mine and the WMLP Debtors' mines in Ohio and Kentucky – that would provide greater overall value to each of the WLB Debtors' and the WMLP Debtors' estates than they were to receive under the Original Buckingham APA. The Stalking Horse Bidder's initial offer included additional cash consideration for the Buckingham Mine and a proposal to buy the Oxford Assets in a "cashless" transaction by assuming all liabilities associated with the Oxford Assets. The cashless transaction proposed for the Oxford Assets was significantly higher than the negative $20 million floor that the Oxford Option would have established. This opportunity to create additional value for the Debtors' estates was interesting to the Debtors, who are focused on maximizing the value of their estates.

5. After receiving this new bid from the Stalking Horse Bidder, the Debtors engaged in additional discussions with the Stalking Horse Bidder and the Original Buckingham Purchaser to ensure they received the highest and best bid for all of the Assets. Following several rounds of competing proposals by the Stalking Horse Bidder, and the Original Buckingham Purchaser, the Debtors selected the Stalking Horse Bid (as defined below) as the highest and best offer for the Assets. Now, the Debtors file this Expedited Motion to sell the Assets to the Stalking Horse Bidder or such other entity that provides higher or better bid for the Assets pursuant to the expedited sale process set forth herein.

6. The expedited sale process described herein is necessary to ensure the consummation of the Sale Transactions occurs within the timelines contemplated by the APAs, the DIP Order, and the Cash Collateral Order. The WLB Debtors and WMLP Debtors believe the Sale Transactions provide significantly more value to each of their respective estates than the Original Buckingham Sale Transaction.

Background

I. The Debtors' Businesses and the Filing of These Cases

7. The Debtors and their non-Debtor affiliates operate the sixth-largest coal-mining enterprise in North America, including 19 coal mines in six states and Canada. The Debtors primarily produce and sell thermal coal to investment grade power plants under long-term, cost-protected contracts, as well as to industrial customers and barbeque charcoal manufacturers. Headquartered in Englewood, Colorado, the Debtors and their non-Debtor subsidiaries employ approximately 2,971 individuals. The Debtors' revenue for the twelve-month period that ended August 31, 2018, totaled approximately $850 million. As of the Petition Date, the Debtors' aggregate prepetition indebtedness totaled approximately $1.1 billion.

8. On October 9, 2018 (the "Petition Date"), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases. On October 18, 2018, the United States Trustee for the Southern District of Texas appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code (the "Creditors' Committee") (Docket No. 206).

9. A detailed description of the Debtors' businesses and the reasons for commencing the chapter 11 cases is set forth in the Declaration of Jeffrey S. Stein, Chief

Restructuring Officer of Westmoreland Coal Company, in Support of Chapter 11 Petitions and First Day Pleadings (Docket No. 54) (the "First Day Declaration").

II. The Sale Process and Related Items

A. The Proposed Sale Transactions and Marketing Process.

10. Due to the challenging regulatory and economic conditions facing coal companies, the Debtors' businesses have faced a marked downturn over the past several years. In 2017, the Debtors undertook a rigorous process to evaluate possible alternatives to deleverage their capital structure.

11. Prior to the Petition Date, the WMLP Debtors engaged various professionals to assist in the exploration and analysis of strategic alternatives, including Lazard Freres & Co., LLC ("Lazard") as financial advisors.[5] With their assistance, the WMLP Debtors developed and negotiated with WMLP's term loan lenders and WLB a sale protocol for the WMLP Debtors' assets. The Debtors finalized the protocol in June 2018. Immediately thereafter, the WMLP Debtors and Lazard began operating thereunder to locate a suitable buyer for the Oxford Assets.

12. After completing the WMLP Debtors' business plan in late July 2018, the WMLP Debtors began the process of soliciting interest from potential third party purchasers. Lazard launched "Phase I" of the formal sale process on August 7, 2018. At that time, Lazard reached out to 29 potentially interested parties, consisting primarily of strategic coal mining companies, as well as other buyers who expressed interest in considering the purchase of all or a

[5] On November 14, 2018, the Court entered the *Order Authorizing the Retention and Employment of Lazard Freres & Co. LLC as Financial Advisor and Investment Banker for the Conflicts Committee of the Westmoreland Resources GP, LLC Board of Directors and for Westmoreland Resource Partners, LP and Its Subsidiaries Effective, as of the Petition Date* (Docket No. 492).

Although Lazard was retained to perform activities related to the sale process, they were originally retained by the Conflicts Committee in August 2017 to evaluate strategic alternatives for the WMLP Debtors.

substantial portion of the WMLP Debtors' assets. As part of Phase I of this process, 12 of those parties contacted entered into non-disclosure agreements and were provided with a confidential information memorandum, financial projections and access to an online data room with substantial due diligence information. Lazard received eight Phase I bids. Thereafter, in early October 2018, Lazard moved five bidders into "Phase II" for further evaluation of the WMLP Debtors' assets, while also continuing to engage additional potentially interested buyers. Of the five bidders moved into Phase II (and one additional bidder added later), three bidders submitted bids to purchase all of the WMLP Debtors' assets; one bidder sought to purchase just the Oxford Assets; and two bidders sought contracts to operate certain of the mining properties. By the completion of Phase II, Lazard had contacted a total of 36 potentially interested parties. To date, Lazard has contacted a total of 44 potentially interested parties, 23 of whom have executed non-disclosure agreements and received a confidential information memorandum, financial projections and access to an online data room with substantial due diligence information to obtain additional information about the WMLP Debtors' assets.

13. As a part of, and throughout, this marketing process, the WMLP Debtors and Lazard have responded (and will continue to respond) to interested parties' diligence requests, including numerous conversations with potential buyers regarding the potential sale of the WMLP Debtors' assets. Such conversations included discussions with parties interested in a going-concern transaction as well as parties interested in a select subset of the WMLP Debtors' assets and liquidation-oriented transactions.

14. Centerview Partners LLC ("Centerview"),[6] on behalf of the WLB Debtors, began marketing the Buckingham Mine as part of its non-core asset marketing process starting in August 2018. See Initial Buckingham Sale Motion, at Bremer Decl. ¶ 9. Centerview reached out to a broad list of potential buyers consisting of 37 parties, including financial and strategic buyers. See id. Despite running a comprehensive marketing process, prior to the Stalking Horse Bidder reaching out to the Debtors, the Original Buckingham Purchaser's proposal under the Original Buckingham APA was the only proposal that the WLB Debtors received to acquire the Buckingham Mine that offered both the assumption of significant reclamation liabilities and a cash payment to the WLB Debtors. See id.

15. The Buckingham Mine supplies coal to American Electric Power Company, Inc. ("AEP") under a long-term coal supply agreement that will expire as of December 31, 2019. See id. at ¶ 6. Importantly, since this coal supply agreement with AEP expires on December 31, 2019 and is not expected to be renewed or replaced, the principal value of the Buckingham Mine is driven by cash flows generated in 2019. See id. at ¶ 9. It is for this reason that the WLB Debtors believe the value of the Buckingham Mine to potential buyers will significantly decline throughout 2019. See id.

16. After the filing of the Original Buckingham Motion, the Debtors leveraged the competing bids of the Original Buckingham Purchaser and the Stalking Horse Bidder against each other in order to drive bids higher. Ultimately, after several rounds of bidding and significant analysis of the benefits of each proposed transaction for each of the WLB Debtors' and the WMLP Debtors' creditors, employees, vendors and other stakeholders, the Debtors determined that the

[6] On November 14, 2018, the Court entered the *Order Authorizing the Retention and Employment of Centerview Partners LLC as Financial Advisor and Investment Banker for the Debtors and Debtors In Possession Effective Nunc Pro Tunc to the Petition Date* (Docket No. 494).

offer presented by the Stalking Horse Bidder was the best option for the WLB Debtors' and the WMLP Debtors' respective creditors and stakeholders. Following intense arm's-length, good-faith negotiations, the Debtors and the Stalking Horse Bidder agreed to the terms of the APAs under which the Stalking Horse Bidder is to serve as a stalking horse for the sale of the all of the Assets under section 363 of the Bankruptcy Code (such offer, the "Stalking Horse Bid").

17. The Debtors determined in consultation with their professionals that entering into the APAs with the Stalking Horse Bidder and providing for a final opportunity for additional bids is (a) the best available way to maximize the value of both the WLB Debtors' and the WMLP Debtors' estates and (b) in the best interests of the Debtors' creditors, employees, vendors and other stakeholders. Further, the Stalking Horse Bid will be subject to the expedited "market test" outlined in this Expedited Motion to confirm that the Stalking Horse Bid is the highest and best offer for the Assets.

B. The Need for an Expedited Sale Process

18. The Debtors believe that the auction process and time periods set forth in the Bidding Procedures are reasonable and will have provided parties with sufficient time and information necessary to formulate a bid to purchase the Assets. In formulating the procedures and time periods, 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 the Assets, especially considering the fact that the Debtors have marketed the Assets for almost six months, and that the Original Buckingham Purchaser and the Stalking Horse Bidder were the only two parties to provide actionable offers to date. Given the extensive marketing efforts the Debtors have undertaken prior to the filing of this Expedited Motion (in fact, the Debtors' marketing of the Assets began several months prior to the filing of these chapter 11 cases), the Debtors already have

made substantial information regarding the Assets available to what they view as the likely pool of potential purchasers.

19. Based upon these substantial marketing efforts, the Debtors believe that any potential purchaser who may have an interest in bidding at the Auction already has most, if not all, of the diligence and other information necessary to formulate a bid. Furthermore, potential bidders have had access to additional updated information prepared by the Debtors and their advisors and a substantial body of information, including financial projections and an extensive data room, including information gathered specifically based upon the due diligence requests of potential buyers.

20. While considering whether and how to provide a final market test for the Buckingham Assets, the WLB Debtors considered that the Stalking Horse Bid has an outside closing date of February 12, 2019. Accordingly, the WLB Debtors required a timeline that would provide as much certainty as possible with respect to the ability to close a transaction with the Stalking Horse Bidder. On the other hand, the WLB Debtors also wanted to allow potential bidders a final (expedited) opportunity to provide a higher or better offer than the Stalking Horse Bid, to confirm that the WLB Debtors have received the highest and best offer for the Buckingham Mine. To strike the appropriate balance, the WLB Debtors have determined that pursuing the Sale Transactions in a manner and with the expedited procedures proposed herein is in the best interest of the WLB Debtors' estates and will still provide all interested parties with sufficient opportunity to participate.

21. The WMLP Debtors' use of cash collateral and related terms of the Final Cash Collateral Order governing such use were also a factor in determining the timing of the

proposed Sale Transactions.[7] The time-frame set forth in the Bidding Procedures allows the WMLP Debtors to comply with the sale milestones established in paragraph 7(a) of the Cash Collateral Order (as amended), and the failure to meet such milestones and potential corresponding loss of ability to continue to use cash collateral may have severe consequences on the WMLP Debtors' ability to maximize the value of their estates. Thus, the WMLP Debtors have determined that pursuing the Oxford Sale Transaction in a manner and with the procedures proposed is in the best interest of the WMLP Debtors' estates and will provide all interested parties with sufficient opportunity to participate.

22. Finally, the go forward operations and related economics of the Assets dictates that an expedited sale process is in the best interests of the WLB Debtors' and the WMLP Debtors' respective estates. The continued maintenance and operation of the Assets provides little (if any) positive economic benefit to the estates, and, as described in the Initial Buckingham Sale Motion, the value of the Buckingham Mine is largely tied to a coal supply agreement that will expire as of December 31, 2019. Stated simply, there is little if any net positive economic impact to the Debtors' estates if they continue to own and operate the Assets.

23. The key dates the Debtors will utilize in connection with the Sale Transactions are as follows:

[7] The "Final Cash Collateral Order" refers to the *Final Order (I) Authorizing the MLP Debtors to Use Cash Collateral Pursuant to 11 U.S.C. § 363, (II) Granting Certain Protections to Prepetition Lenders Pursuant to 11 U.S.C. § 105, 361, 362, 363, and 507, (III) Modifying the Automatic Stay and (IV) Granting Related Relief*, entered by the Bankruptcy Court on November 15, 2018 (Docket No. 521).

EVENT	DATE
Deadline to File Cure Schedule	Filed Contemporaneously with this Expedited Motion
Bid Deadline	January 30, 2019
Assignment and Cure Objection Deadline	February 1, 2019, at 12:00 p.m. (prevailing Central Time)
Objection Deadline	February 1, 2019, at 12:00 p.m. (prevailing Central Time)
Auction Date	February 1, 2019
Deadline to Publish Results of Auction	February 2, 2019
Supplemental Sale Objection Deadline	Must be made, in person, at the Sale Hearing.
Sale Hearing	February 4, 2019
Outside Closing Date	February 12, 2019

24. In addition, the following is a summary of the major components of the Bidding Procedures the Debtors intend to use in connection with the Sale Transactions:[8]

PROVISION	SUMMARY DESCRIPTION
The Stalking Horse Bid	The Stalking Horse Bidder has made the Stalking Horse Bid for the Assets. As such, the Stalking Horse Bidder has agreed to serve as the lead bidder for the Assets on the terms set forth in the APAs. The Stalking Horse Bid will serve as a floor bid for the Assets in the aggregate.
Participation Requirements	The Bidding Procedures detail certain requirements to participate in the bidding process, including, among other things, the execution of a confidentiality agreement. Each party meeting these requirements, set forth in full in the Bidding Procedures, has been or will be deemed a "Potential Bidder,"

[8] The summaries of the material terms of the Bidding Procedures set forth below are qualified in their entirety by the specific terms and conditions of the Bidding Procedures. Capitalized terms used but not defined herein are either defined later in this document or have the meanings given to them in the Bidding Procedures.

PROVISION	SUMMARY DESCRIPTION
	and the Debtors have provided or will provide such Potential Bidders access to the Data Room (as defined below).
Bid Deadline	January 30, 2019 at 4:00 p.m. (prevailing Central Time) (the "Bid Deadline").
Bid Requirements	To be a "Qualified Bid" (and such Potential Bidder submitting such bid, a "Qualified Bidder") a bid must meet the requirements enumerated in the Bidding Procedures, including the following: (a) each Qualified Bid must (i) be substantially on the same or better terms than the terms of the APAs, including no less than $350,000 in consideration (which may be cash or working capital adjustments) of which no less than $250,000 shall be consideration for the Oxford Assets and (ii) each Potential 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 APAs with respect to the Stalking Horse Bid provided by the Debtors to Potential Bidders; (b) each Bid must be accompanied by a deposit by wire transfer to an escrow agent selected by the Debtors equal to $2,500,000, which shall be allocated among the WLB Debtors and WMLP Debtors consistent with the deposits under the APAs (any such deposit, a "Good Faith Deposit"); (c) each Qualified 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 Potential Bidder and (iii) demonstrate, in the Debtors' reasonable business judgment, that the Potential Bidder can provide adequate assurance of future performance under all such executory contracts and unexpired leases; (d) each Qualified Bid must (i) provide that the Potential Bidder will: (1) take transfer of or obtain permits for the mining operations to be acquired, (2) assume all associated reclamation obligations with respect to the mines subject to the Bid to the extent required under applicable nonbankruptcy law, and (3) obtain the necessary reclamation surety bonds required for such permits, and (ii) provide evidence of: (1) the Potential Bidder's ability to satisfy the conditions set forth in (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 (2) the Potential Bidder's financial resources necessary to obtain assignment of or replace the reclamation surety bonds associated with such permits,

PROVISION	SUMMARY DESCRIPTION
	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); (e) each Qualified 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 Debtors, after consultation with the Consultation Parties,[9] 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; and (f) each Qualified 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. The Stalking Horse Bid is deemed a Qualified Bid for the Assets. A Qualified Bid must contemplate the purchase of substantially all of the Assets. A Qualified Bid must also indicate whether the Potential Bidder intends to hire all employees who are primarily employed at the Assets, and expressly propose a treatment of the employee-related agreements and obligations of the Assets.
Auction	In the event that the Debtors timely receive more than one Qualified Bid, the Debtors shall conduct an Auction of the Assets on February 1, 2019, at 9:00 a.m. (prevailing Central Time) at the offices of conflicts counsel to the WMLP Debtors, Jones Day, 717 Texas Avenue, Suite 3300, Houston, Texas 77002-2712. The Auction shall be in accordance with the Bidding Procedures and upon notice (including the location of the Auction) to all Qualified Bidders who have submitted Qualified Bids. In the event no other Qualified Bid other than the Stalking Horse Bid is received on or prior to the Bid Deadline, no Auction shall occur and the Debtors shall seek approval of the Sale Transactions to the Stalking Horse Bidder.
Rules of the Auction	After consultation with the Consultation Parties, the Debtors may at any time adopt rules for the Auction that the Debtors reasonably determine to be appropriate to promote the goals of

[9] The "Consultation Parties" shall include the following: (a) counsel or financial advisors to the Creditors' Committee; (b) counsel or financial advisors to the MLP Lenders; and (c) counsel or financial advisors to the WLB Secured Parties.

PROVISION	SUMMARY DESCRIPTION
	the bidding process, including one or more adjournments of the Auction. The rules of the Auction will be announced on the record at the outset of the Auction.
Modification of Bidding Procedures	After consultation with the Consultation Parties, the Debtors may amend the Bidding Procedures or the bidding process at any time, and from time to time, in any manner that they determine in good faith will best promote the goals thereof, including extending or modifying any of the dates described therein or the information and material required from Qualified Bidders, and a process for the Debtors to select an alternate/back-up bid to the extent the Sale Transactions to the successful bidder do not close for any reason.
Outside Closing Date	February 12, 2019.
Return of Good Faith Deposit	The Good Faith Deposits of all Qualified Bidders except for the successful bidder and any alternate bidder will be returned within five business days of the entry of the Sale Order. At the closing of the Sale Transactions, the successful bidder will be entitled to a credit for the amount of its Good Faith Deposit. The Good Faith Deposit of any alternate bidder will be returned by the Debtors five business days after the closing of the Sale Transactions.

C. The Terms of the APAs

25. The pertinent terms of the APAs are summarized in the following tables:

NEW BUCKINGHAM APA TERM[10]	SUMMARY DESCRIPTION
Purchase Price	a) $1,750,000 in cash; and b) assumption of the Assumed Liabilities, which includes all Reclamation obligations and certain Trade Payables equal to $750,000.
Deposit	Deposit Amount of $1,750,000.

[10] The summary of the material terms of the New Buckingham APA set forth in this table are qualified in their entirety by the specific terms and conditions of the New Buckingham APA. To the extent there exists any inconsistency between this summary and the New Buckingham APA, the New Buckingham APA shall govern. Capitalized but undefined terms in this table shall be given the meanings provided to them in the New Buckingham APA.

NEW BUCKINGHAM APA TERM[10]	SUMMARY DESCRIPTION
	Deposit Amount retained by Buckingham if Agreement is terminated for breach by Purchaser. If Closing occurs, Deposit Amount will be retained by Buckingham and applied towards the Purchase Price payable by Purchaser.
Reclamation and Environmental Liabilities	Purchaser to assume all Liabilities of Sellers arising out of or relating to: a) the Transferred Permits/Licenses, including such Liabilities thereunder arising out of or relating to all Reclamation and post-mining Liabilities of the Business and/or the Purchased Assets; b) the Purchased Assets' or the Business's compliance with Environmental Laws; and c) any conditions arising from a spill, emission, release or disposal into the environment of, or human exposure to, hazardous materials resulting from the operation of the Business or Purchased Assets.
Other Assets / Liabilities	Purchaser receives all assets that are "primarily" related to the conduct of the Business, including owned and leased real property, equipment and fixed assets, coal inventory, prepaid advance royalties, rebates and other similar items, non-rejected contracts, permits and licenses, claims under warranties / guarantees, and claims under certain insurance policies issued exclusively to Sellers. Purchaser assumes all Cure Costs, Trade Payables equal to $750,000, and Transfer Taxes. Sellers retain all assets that are not "primarily" related to Business, including assets of Westmoreland, cash of Sellers, insurance policies (and related claims) not issued exclusively to Sellers, avoidance or other similar causes of action arising under the Bankruptcy Code, Tax assets, benefit plans, accounts receivable and similar items, and all bonding collateral.
Closing Conditions	Conditions for the benefit of (and waivable by) Purchaser include: a) Sellers' representations and warranties must be true and correct, subject to a "material adverse effect" threshold; and b) Delivery of Sellers' closing deliverables. Conditions for the benefit of (and waivable by) Sellers include a) Purchaser's representations and warranties must be true and correct, subject to a "material adverse effect" threshold; b) Delivery of Purchaser's closing deliverables;

NEW BUCKINGHAM APA TERM[10]	SUMMARY DESCRIPTION
	c) Satisfactory arrangements must be in place regarding replacement bonding; d) No adverse developments have occurred that are expected to interfere with permit transfers; and e) Termination of existing bond agreement and entry into a replacement bond agreement. Conditions for the benefit of (and waivable by) Purchaser and Sellers include: a) Bankruptcy court approval; and b) Purchaser must have completed its acquisition of Oxford (expected to be completed concurrently).
Other	Prior to Closing, Sellers are required to use their commercially reasonable efforts to assist Purchaser in the hiring of Buckingham employees; terms and mechanics of employee transfer mirror those agreed to by WCC with respect to Oxford employees. The Purchaser is obligated to make offers of employment to all Buckingham employees on substantially the same terms as currently employed, and on the Closing Date, the Buckingham Seller shall terminate all employees.

OXFORD APA TERM[11]	SUMMARY DESCRIPTION
Purchase Price	Assumption of the Assumed Liabilities, which includes all Reclamation Obligations, together with the Excess Net Working Capital Payment (if any).
Go-Shop & Termination Payment	WMLP and its advisors are expressly permitted to solicit competing bids. Termination Payment of $250,000, payable if Oxford is sold to competing bidder (or in certain cases where WMLP breaches APA).
Deposit Amount	Deposit Amount of $750,000.

[11] The summaries of the material terms of the Oxford APA set forth in this table are qualified in their entirety by the specific terms and conditions of the Oxford APA. To the extent there exists any inconsistency between these summaries and the APAs, the APAs shall govern. Capitalized but undefined terms in this table shall be given the meaning provided to them in the Oxford APA.

OXFORD APA TERM[11]	SUMMARY DESCRIPTION
	Deposit Amount retained by WMLP if Purchaser fails to close the transaction when required to do so under terms of APA. If closing occurs, Deposit Amount will be refunded to Purchaser upon Purchaser's successful completion of post-closing permit transfer process.
Reclamation and Environmental Liabilities	Purchaser to assume all liabilities of Sellers arising out of or relating to: a) The Transferred Permits/Licenses, including such Liabilities thereunder arising out of or relating to all Reclamation and post-mining Liabilities of the Business or the Purchased Assets and such Liabilities thereunder arising with respect to the Interim Period; b) Any mine operation or safety compliance matters related to the condition of the Purchased Assets or the mining areas of the Business, but excluding any Excluded Pre-Closing Fines; c) The Purchased Assets' or the Business's compliance with Environmental Laws; and d) Any conditions arising from a spill, emission, release or disposal into the environment of, or human exposure to, hazardous materials resulting from the operation of the Business or Purchased Assets.
Other Assets / Liabilities	Purchaser receives all assets that are "primarily" related to the mining, processing, marketing and sale of thermal coal from the mining complexes commonly referred to as Oxford located in Ohio and Kentucky. Including owned and leased real property, Equipment and Fixed Assets, coal inventory, accounts receivable and similar items, non-rejected contracts, permits and licenses, claims under warranties / insurance policies / similar items, goodwill directly associated with the Purchased Assets, Documents, Oxford logos, Prepaid Expenses, Cash Collateral and related intellectual property. Purchaser assumes all cure costs, post-petition trade payables and transfer taxes. WMLP retains all assets that are not "primarily" related to Oxford, expressly including all assets related to Kemmerer and Oxford Mining Company's membership interest in Westmoreland Kemmerer Fee Coal Holdings, LLC and all assets of Westmoreland Kemmerer Fee Coal Holdings, LLC.

OXFORD APA TERM[11]	SUMMARY DESCRIPTION
	WMLP also retains all Oxford-related cash (other than the Cash Collateral). WMLP also retains all rights, claims, causes of action and credits related to Oxford v. Ohio Gathering and all assets or other proceeds or benefits arising therefrom.
Closing Conditions	Bankruptcy court approval. Conditions for the benefit of (and waivable by) Purchaser include: a) WMLP's representations and warranties must be true and correct, subject to a "material adverse effect" threshold; b) Purchaser must have completed its acquisition of Buckingham (expected to be completed concurrently); and c) No Seller Material Adverse Effect shall have occurred since the date of the agreement. Conditions for benefit of (and waivable by) WMLP include a) Satisfactory arrangements must be in place regarding replacement bonding; and b) No adverse developments have occurred that are expected to interfere with permit transfers.
Other	Prior to Closing, WMLP is required to use its commercially reasonable efforts to cause WCC to enable employee transfers to Purchaser; terms and mechanics of employee transfer mirror those agreed to by WCC with respect to Buckingham employees.

Jurisdiction

26. The Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Basis for Relief Requested

I. The Sale Transactions Are Warranted Under Section 363 of the Bankruptcy Code

27. Authorizing a sale of a debtor's assets pursuant to section 363 of the Bankruptcy Code is appropriate when a sound business justification exists for the proposed transaction. See Institutional Creditors of Cont'l Air Lines, Inc. v. Cont'l Air Lines, Inc.

(In re Cont'l Air Lines, Inc.), 780 F.2d 1223, 1226 (5th Cir. 1986) (stating that for a debtor in possession "to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling or leasing the property outside the ordinary course of business"); In re 9 Houston LLC, 578 B.R. 600, 610 (Bankr. S.D. Tex. 2017) (stating that, under Continental, to gain approval of a sale of assets outside the ordinary course of business, "the debtor must articulate a sound business reason for the proposed sale and prove that the sale is in the best interest of the estate") (citing Cont'l Air Lines, 780 F.2d at 1226). When a debtor demonstrates a valid business justification for a decision, a strong presumption arises "that in making [the] business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company." Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1990) (holding that the business judgment rule has "vitality by analogy" in chapter 11) (citations omitted).

28. Moreover, once a debtor articulates a valid business justification for its actions, courts should "give great deference to the substance of the directors' decision and will not invalidate the decision, will not examine its reasonableness, and will not substitute its views for those of the board if the latter's decision can be attributed to any rational business purpose." In re Global Crossing Ltd., 295 B.R. 726, 744 (Bankr. S.D.N.Y. 2003) (citing Paramount Commc'ns Inc. v. QVC Network Inc., 637 A.2d 34, 45 n.17 (Del. 1994)); accord Integrated Res., 147 B.R. at 656 (presuming, based on the business judgment rule, "that in making a business decision the directors of [the debtor] acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company") (quoting Smith v. Van Gorkom, 488 A.2d 858, 872 (Del. 1985)); In re Johns Manville Corp., 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) ("Where

the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct."); see also In re Idearc Inc., 423 B.R. 138, 162 (Bankr. N.D. Tex. 2009) (explaining that, "[i]n the absence of a showing of bad faith or an abuse of business discretion," the court will not alter a debtor' business judgment, while analyzing a debtor's decision to assume/reject contracts).

29. Here, a sound business justification exists for the sale of both the Oxford Assets and the Buckingham Mine. The WLB Debtors and WMLP Debtors commenced these cases to sell their respective assets as a going concern. The Final Cash Collateral Order reflects this strategy and requires that the WMLP Debtors sell their assets on or before March 31, 2019. Similarly, the WLB Debtors commenced these cases with a pre-arranged chapter 11 plan to sell their core assets to their prepetition secured lenders on or before February 28, 2019, and sell their non-core assets to a third party or, if no such third party buyer emerged, to transfer the WLB Debtors' non-core assets to their prepetition lenders as well.

30. The Stalking Horse Bid provides consideration for the Buckingham Assets that is $750,000 (in cash) more than contemplated under the Original Buckingham APA and also includes the assumption of assets and liabilities that are, in certain cases, more beneficial to the Debtors' estates than the Original Buckingham APA (for example, the Stalking Horse Bidder has agreed to assume $750,000 in accounts payable that the Original Buckingham Purchaser was not assuming). The Stalking Horse Bid contemplates the transfer of the Oxford Assets to the Stalking Horse Bidder without any further contribution from the Debtors' estates except for the assumption of existing surety bond collateral. In contrast, the Oxford Option relating to the Oxford Assets set forth in the Original Buckingham APA contemplates the payment of up to $20 million by the Oxford Acquirer to the purchaser thereunder. Accordingly, the Debtors have concluded that the

Stalking Horse Bid is a material improvement on the terms provided in the Original Buckingham APA.

31. Moreover, as described above, the Debtors have marketed the Assets extensively to date. The Debtors believe the Stalking Horse Bid likely will represent the highest or best offer for the Assets. Nevertheless, in a last attempt to ensure no other higher or better bid exists, the Debtors will employ the Bidding Procedures and related additional marketing efforts to make certain no other higher or better offer exists. See, e.g., In re FPMC Austin Realty Partners, LP, 573 B.R. 679, 688 (Bankr. W.D. Tex. 2017) (noting that property is often sold in bankruptcy cases pursuant to an auction, because "an auction is usually the best way to encourage those bidders to increase the ultimate purchase price"); see also In re Trans World Airlines, Inc., 2001 WL 1820326, at *4 (Bankr. D. Del. Mar. 27, 2001) (stating that while a "section 363(b) sale transaction does not require an auction procedure, … the auction procedure has developed over the years as an effective means for producing an arm's-length fair value transaction").

32. The Debtors submit that any successful bid will constitute the highest or otherwise best offer for the Assets and will provide a greater recovery for the Debtors' estates than would be provided by any other available alternative. As such, the Debtors' determination to sell the Assets in accordance with the terms of the Stalking Horse Bid or another higher or better bid represents a valid and sound exercise of the Debtors' business judgment.

A. Other Factors Cited by Courts Also Weigh in Favor of Approving the Sale.

33. In Continental, the Fifth Circuit (quoting the Second Circuit's decision in Lionel) stated that, in determining whether an adequate business justification exists for a proposed sale under section 363(b) of the Bankruptcy Code, the bankruptcy court "should consider all salient factors pertaining to the proceeding," which factors, depending on the circumstances of the case, may include (a) "the proportionate value of the asset to the estate as a whole;" (b) "the amount of

elapsed time since the filing;" (c) "the likelihood that a plan of reorganization will be proposed and confirmed in the near future;" (d) "the effect of the proposed disposition on future plans of reorganization;" (e) "the proceeds to be obtained from the disposition vis à-vis any appraisals of the property;" (f) "which of the alternatives of use, sale or lease the proposal envisions;" and (g) "whether the asset is increasing or decreasing in value" (collectively, the "*Continental* Factors"). Cont'l Air Lines, 780 F.2d at 1226 (quoting Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1071 (2d Cir. 1983)).

34. In Gulf Coast, this Court articulated several additional "factors that a court can consider in determining whether to approve a § 363(b) sale prior to confirmation of a chapter 11 plan." In re Gulf Coast Oil Corp., 404 B.R. 407, 422 (Bankr. S.D. Tex. 2009). The factors include (a) whether "there is evidence of a need for speed;" (b) whether the case is "sufficiently mature to assure due process;" (c) whether the proposed asset purchase agreement is "sufficiently straightforward to facilitate competitive bids" and whether the purchaser is the only potential interested party; (d) whether the assets have been "aggressively marketed in an active market;" (e) whether "the fiduciaries that control the debtor [are] truly disinterested;" (f) whether the proposed sale includes all of the debtor's assets or the debtor's "crown jewel;" (g) whether there are any "extraordinary protections" demanded by the purchaser; (h) "[h]ow burdensome [it would] be to propose the sale as part of confirmation of a chapter 11 plan;" (i) "[w]ho will benefit from the sale;" (j) whether "special adequate protection measures are necessary and possible;" and (k) whether the hearing was "a true adversary presentation" and whether "the integrity of the bankruptcy process [is] protected" (collectively, the "*Gulf Coast* Factors"). Id. at 423-27. The Gulf Coast opinion further stated that "[e]ach case is unique. There may be other factors that tip the balance or that overweigh the [*Gulf Coast* Factors]." Id. at 427.

35. Most recently, in 9 Houston, this Court revisited the standard applicable to asset sales under section 363(b) of the Bankruptcy Code, applied those *Continental* Factors and *Gulf Coast* Factors it deemed relevant under the circumstances and articulated four additional factors, i.e., whether (a) the debtor "disclosed all of the terms of the proposed transaction;" (b) the objecting party can "defeat any plan of reorganization proposed by the Debtor that contains the provisions of the [proposed transaction];" (c) the parties negotiated at arm's-length ; and (d) the purchaser "has been proceeding in good faith" (collectively, the "9 *Houston* Factors" and, collectively with the *Continental* Factors and the *Gulf Coast* Factors, the "Section 363(b) Sale Factors"). 9 Houston, 578 B.R. at 616-618.

36. Here, application of the relevant Section 363(b) Sale Factors overwhelmingly weighs in favor of approving the Sale Transactions:

- First, the Assets have been "aggressively marketed in an active market." See *Gulf Coast* Factor (d). As detailed above, Centerview reached out to 37 different potential buyers, including financial and strategic buyers, however, the Stalking Horse Bid and the Original Buckingham APA were the only offers the WLB Debtors received for the Buckingham Mine that offered both the assumption of significant reclamation liabilities and a cash payment to the WLB Debtors. See Initial Buckingham Sale Motion, at ¶ 15. As detailed above, the WMLP Debtors, in conjunction with Lazard, have conducted a robust marketing process that was designed to yield the highest and best bids that can be obtained for the Oxford Assets. See supra ¶¶ 10-13. Despite the macroeconomic challenges impacting the coal industry as a whole, the WMLP Debtors' marketing of their assets, which was launched in August 2018, has continued. As of January 8, 2019, Lazard has reached out to 44 parties, executed 23 non-disclosure agreements and received three bids for substantially all of the Oxford Assets. Lazard has actively and continuously engaged in discussions with potential bidders to provide diligence materials, site visits and other information to facilitate these marketing efforts and maximize potential bids – and these efforts remain ongoing.

- Second, there is a "need for speed" justifying approval of the Sale Transactions prior to the confirmation of any chapter 11 plan. See *Gulf Coast* Factors (a), (h); *Continental* Factors (c), (g). Coal mines are depleting assets containing finite quantities of coal that are available for extraction and sale on a profitable basis. As such, at constant coal prices, coal mining operations tend to decline in value over time. Regardless of any given mine's operating status or profitability, the terms of the APAs (including the relevant sale milestones) and deadlines included in the WMLP Debtors' Final Cash Collateral Order

contemplate the Sale Transactions closing in the near term. Courts within the Fifth Circuit have approved asset sales pursuant to section 363 of the Bankruptcy Code under analogous circumstances. See, e.g., In re Torch Offshore Inc., 327 B.R. 254, 258 (E.D. La. 2005) (affirming order approving sale of offshore oil vessels comprising substantially all of the debtor's assets under section 363(b) of the Bankruptcy Code; in applying the *Continental* Factors, stating that "[m]ost importantly, … maintaining the vessels was costing the debtor an exorbitant amount of money, and the condition of the vessels was deteriorating over time"); In re Condere Corp., 228 B.R. 615, 623, 629 (Bankr. S.D. Miss. 1998) (approving sale of substantially all of tire manufacturer's assets under section 363(b) of the Bankruptcy Code where debtor lacked sufficient cash for capital expenditures necessary to improve the business' profitability and preserve its value as a going concern). The terms (including the relevant sale milestones) of the APAs combined with the WMLP Debtors' cash collateral usage make selling the Assets under a chapter 11 plan difficult, if not impossible. See 9 Houston, 578 B.R. at 616 (determining that the costs and delays associated with selling assets under a plan as compared to conducting a section 363(b) sale justified the latter approach). Moreover, as set forth above, a large portion of the value of the Assets will be realized in 2019 due to the AEP coal contract that is set to expire on December 31, 2019. Due in part to that contract expiration, both the Stalking Horse Bidder and the Original Buckingham Purchaser set outside dates in January 2019 or February of 2019 for the closing of their sales, to ensure that such purchasers can receive the value they are paying for pursuant to their proposed sales. As such, completing a sale for the Assets under section 363(b) of the Bankruptcy Code is the only avenue for the Debtors to capture their going concern value.

- Third, these cases are "sufficiently mature to assure due process," and all terms of the Sale Transactions will be disclosed prior to the Hearing. See *Gulf Coast* Factor (b); *Continental* Factor (b); *9 Houston* Factor (a). Despite the exigencies discussed above, requiring the Debtors to consummate a sale in the near term to maximize stakeholder value, the Debtors have carefully planned the sale timeline and notice procedures proposed herein to ensure that parties in interest will have a full and fair opportunity to participate in the sale approval process. Moreover, as the Gulf Coast decision makes clear, courts analyze this factor primarily to guard against situations where "assets are sold immediately after the case is filed." Gulf Coast, 404 B.R. at 423 (explaining that "[i]t takes time for official committees … to organize and to engage counsel, for the committees to hire financial or other experts if necessary, for government regulatory agencies to mobilize to participate in cases …, and for other creditors and parties in interest to determine whether (and how) to participate in the case"). Because (a) these cases were commenced over three months ago, giving parties in interest ample time to retain counsel and participate in these cases, (b) the Creditors' Committee was formed, and retained both counsel and financial advisors, shortly after the Petition Date and (c) other parties in interest (including various governmental authorities) have received notice of – and, in many instances, actively participated in – these cases since the Petition Date, none of the due process concerns referenced in Gulf Coast are present here.

- Fourth, because the Debtors designed the Bidding Procedures to yield the highest or otherwise best bids for the Assets – including by establishing a "floor" bid (i.e., by the Stalking Horse Bid) and subjecting such bid to a further market test – the Sale Transactions

will maximize value for the benefit of the Debtors' estates and all stakeholders. See *Gulf Coast* Factors (c), (i). Although the sale process remains ongoing, the Debtors' marketing efforts already have ensured that the Stalking Horse Bidder is not "the only potential interested party," as evidenced by the Original Buckingham APA and the 44 contacted parties, 23 executed non-disclosure agreements and three bids for substantially all of the Oxford Assets, to date. See Gulf Coast, 404 B.R. at 424. Moreover, the interest shown and diligence undertaken by multiple potential bidders in the Assets demonstrates that the concern underlying the *Gulf Coast* Factor regarding "who will benefit from the sale" is not implicated here. See id. at 426 (explaining that courts should scrutinize transactions where "only one party (or a few parties selected by the 'loudest creditor') will benefit from the sale") (internal citation omitted). Rather, both the Bidding Procedures themselves and the results of the Debtors' marketing efforts to date demonstrate that, prior to the consummation to any Sale Transactions, the Assets will be subjected to a true market test.

- Fifth, the fiduciaries in control of the Debtors are disinterested. See *Gulf Coast* Factor (e). The WMLP Debtors' sale process has been, and will continue to be, overseen and directed by the Conflicts Committee (the "Conflicts Committee") of the Board of Directors (the "WMGP Board") of Debtor Westmoreland Resources GP, LLC ("WMGP"), the general partner in WMLP. The Conflicts Committee consists of three independent directors whose responsibilities are set forth in a charter adopted by the WMGP Board on February 18, 2015 (the "Conflicts Committee Charter"), as specifically authorized under the organizational documents of WMLP and WMGP.[12] To further protect the integrity of the sale process and avoid any conflicts of interest in these chapter 11 cases, the Conflicts Committee has retained Jones Day as its counsel and as conflicts counsel to the WMLP Debtors, and Lazard as investment banker to the Conflicts Committee and the WMLP Debtors.[13] Similarly, the board of directors of the WLB Debtors is comprised of seven directors, five of whom are independent directors (the "Independent Directors"). The Independent Directors have been engaged throughout the WLB Debtors' restructuring process and have overseen the WLB Debtors to ensure the avoidance of any conflicts of interest in their chapter 11 cases.

- Sixth, the Stalking Horse Bidder has not demanded any "extraordinary protections". See *Gulf Coast* Factor (g). While the Oxford APA does provide the Stalking Horse Bidder

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[12] For a detailed discussion of these provisions, see the *Application of the WMLP Debtors and the Conflicts Committee of the Westmoreland Resources GP, LLC Board of Directors, Pursuant to Sections 327(a) and 329(a) of the Bankruptcy Code, for an Order Authorizing the Retention and Employment of Jones Day as Counsel for the Conflicts Committee of the Westmoreland Resources GP, LLC Board of Directors and As Conflicts Counsel for Westmoreland Resource Partners, LP and Its Subsidiaries, Effective as of the Petition Date* (Docket No. 214), at ¶¶ 7-10.

[13] See *Order, Pursuant to Sections 327(a) and 329(a) of the Bankruptcy Code, Authorizing the Retention and Employment of Jones Day as Counsel for the Conflicts Committee of the Board of Directors of Westmoreland Resources GP, LLC and as Conflicts Counsel for Westmoreland Resource Partners, LP and Its Subsidiaries, Effective as of the Petition Date* (Docket No. 490); *Order, Pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code, Authorizing the Retention and Employment of Lazard Frères & Co. LLC as Investment Banker for the Conflicts Committee of the Board of Directors of Westmoreland Resources GP, LLC and for Westmoreland Resource Partners, LP and Its Subsidiaries, Effective as of the Petition Date* (Docket No. 492).

with a minimal Termination Payment in the event the Stalking Horse Bidder is not the Successful Bidder, as explained in paragraphs 59-66, below, these provisions are by no means "extraordinary" and are, in fact, far below what other courts in this district have approved.

- Seventh, as set forth in paragraphs 42-45 below, the Debtors have undertaken, and will undertake, good faith, arm's-length negotiations with all bidders, including but not limited to the Stalking Horse Bidder. See *9 Houston* Factors (c), (d).[14]

37. Thus, application of the Section 363(b) Sale Factors to the specific facts of the WMLP Debtors' chapter 11 cases demonstrates that a sound business justification exists for the sale of the Assets, consistent with the guidance set forth by the Fifth Circuit in Continental.

B. The Assets Are Subject to Sale Free and Clear of All Liens and Encumbrances

38. The Debtors request approval to sell the Assets free and clear of any and all liens, claims, interests and encumbrances (except for Assumed Liabilities, as defined in the APAs or other marked APA) in accordance with section 363(f) of the Bankruptcy Code and the Complex Case Procedures.[15] Pursuant to section 363(f), a debtor in possession may sell estate property "free

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[14] The WMLP Debtors submit that the remaining Section 363(b) Sale Factors (to the extent not subsumed within the factors addressed above) either are not directly relevant to the Sale Transactions or are undetermined as of the filing of this Expedited Motion.

[15] The Buckingham Seller acquired certain assets related to the Buckingham Mine from Peabody Development Corp. (or an affiliate thereof) (collectively, "Peabody") in certain transactions that date back to 2001, recorded in 2002, and the Buckingham Seller recorded deeds reflecting such acquisitions. Thereafter, Peabody Coal Company changed its name to Peabody Coal Company LLC in 2005 and thereafter Peabody Coal Company LLC changed its name to Heritage Coal Company, LLC in 2007. Heritage Coal Company, LLC transferred certain assets to Blackhawk Land and Resources, LLC in a Limited Warranty Deed dated June 22, 2015. Exhibit A to the Limited Warranty Deed conveyed the property Heritage intended to convey, however, Exhibit C included tax parcel numbers that were previously conveyed to the Buckingham Seller by Peabody and, it also appears that Peabody Development Company transferred certain assets in Morgan County to HCR Holdings LLC in 2007. HCR Holdings LLC changed its name to Patriot Reserve Holdings, LLC in 2010 and Patriot Reserve Holdings, LLC transferred certain assets to Blackhawk Land and Resources, LLC by Limited Warranty Deed dated June 22, 2015. Exhibit A to the Limited Warranty Deed conveys the property Patriot intended to convey, however, Exhibit C is a list of tax parcel numbers which includes those parcels belonging to the Buckingham Seller from the previous transfer from Peabody. Blackhawk is currently identified, by the Morgan County Assessor, as the owner of the tax parcel numbers previously conveyed to the Buckingham Seller by Peabody and inadvertently included in both Blackhawk deeds referred to above. The Buckingham Seller has administered the assets in question continuously since their acquisition from Peabody, including the payment of real property taxes. Upon entry of the Sale Order, the Purchased Assets, including substantially all assets of the Buckingham Mine, will vest in the Stalking Horse Bidder or other Successful Bidder, free and clear of any purported claim, interest, or encumbrance of any entity,

and clear of any interest in such property of an entity other than the estate" if any one of the following conditions is satisfied:

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

11 U.S.C. § 363(f); see Citicorp Homeowners Serv., Inc. v. Elliot (In re Elliot), 94 B.R. 343, 345 (Bankr. E.D. Pa. 1988) (because section 363(f) is written in the disjunctive, a court may approve a "free and clear" sale even if only one of the subsections is met).

39. Section 363(f) is supplemented by section 105(a) of the Bankruptcy Code, which provides that "[t]he Court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a); see Trans World Airlines, 2001 WL 1820325, at *2; Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.), 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987) ("Authority to conduct such sales [free and clear of claims] is within the court's equitable powers when necessary to carry out the provisions of Title 11.").

40. The Debtors submit that the Sale Transactions will satisfy the requirements of section 363(f) of the Bankruptcy Code and the Complex Case Procedures. To the extent a party

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including Peabody, Patriot, Blackhawk or any third party. The WLB Debtors served the Initial Buckingham Sale Motion on Peabody and Blackhawk, and, prior to filing this Expedited Motion, the Debtors engaged in discussions with Blackhawk regarding the foregoing matter. The Debtors will serve this Expedited Motion on Peabody and Blackhawk.

objects to Sale Transactions on the basis that it does hold a lien or encumbrance on the Assets, the Debtors believe that any such party could be compelled to accept a monetary satisfaction of such claims or that such lien is subject to a bona fide dispute. In addition, to the extent the Debtors discover any party may hold a lien on all, or a portion of, the Assets, the Debtors will provide such party with notice of, and an opportunity to object to, the Sale Transactions. Absent objection, each such party will be deemed to have consented to the sale of the Assets.

41. Accordingly, the Debtors believe that the Sale Transactions (a) will satisfy the statutory prerequisites of section 363(f) of the Bankruptcy Code and (b) should be approved free and clear of all liens, claims, interests and encumbrances.

C. The Sale Transactions Have Been Proposed in Good Faith and Without Collusion.

42. The Stalking Horse Bidder has negotiated with the Debtors in good faith and at arm's-length. As such, the Stalking Horse Bidder is entitled to the protections set forth in section 363(m) of the Bankruptcy Code, which states:

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

11 U.S.C. § 363(m).

43. Section 363(m) of the Bankruptcy Code thus protects a buyer of assets pursuant to section 363 of the Bankruptcy Code from the risk that it will lose its interest in the purchased assets if the order approving the sale is reversed on appeal, provided that the buyer purchased the assets in "good faith." Gilchrist v. Westcott (In re Gilchrist), 891 F.2d 559, 560 (5th Cir. 1990) ("Section 363(m) patently protects, from later modification on appeal, an authorized

sale where the purchaser acted in good faith and the sale was not stayed pending appeal."); Newco Energy v. Energytec, Inc. (In re Energytec, Inc.), 739 F.3d 215, 219 (5th Cir. 2013) ("By providing good faith purchasers with a final order and removing the risks of endless litigation over ownership, Section 363(m) 'allows bidders to offer fair value for estate property[,]' which 'greatly benefits both the debtor and its creditors.'") (quoting Hazelbaker v. Hope Gas, Inc. (In re Rare Earth Minerals), 445 F.3d 359, 363 (4th Cir. 2006)).

44. Although the Bankruptcy Code does not define "good faith," courts have held that a purchaser shows its good faith through the integrity of its conduct during the course of the sale proceedings, finding that where there is a lack of such integrity, a good faith finding may not be made. See In re TMT Procurement Corp., 764 F.3d 512, 521 (5th Cir. 2014) ("In the context of § 363(m), we have defined the term in two ways. On the one hand, we have defined a 'good faith purchaser' as one who purchases the assets for value, in good faith, and without notice of adverse claims. On the other hand, we have noted that the misconduct that would destroy a purchaser's good faith status ... involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.") (internal citations and quotation marks omitted); In re Hereford Biofuels, L.P., 466 B.R. 841, 860 (Bankr. N.D. Tex. 2012) (same); In re Camp Arrowhead, Ltd., 429 B.R. 546, 550 (W.D. Tex. 2010) (same).

45. The Debtors submit the Stalking Horse Bidder, or other successful bidder arising from the Auction, is or would be a "good faith purchaser" within the meaning of section 363(m) of the Bankruptcy Code and the APAs, or any marked version thereof, is or would be a good faith agreement on arm's-length terms entitled to the protections of section 363(m) of the Bankruptcy Code. First, the consideration the Debtors will receive under the APAs is substantial, fair and reasonable. Second, the parties entered into the APAs in good faith, and after

extensive, arm's-length negotiations, during which both parties were represented by competent counsel of similar bargaining positions. Third, there is no indication of any "fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders" or similar conduct that would cause or permit the Sale Transactions or APAs to be avoided under section 363(n) of the Bankruptcy Code. Finally, the WLB Debtors and the Conflicts Committee evaluated and approved the Stalking Horse Bidder's offer after careful evaluation and with the assistance of their respective professionals. To the extent a competing bid prevails at the Auction, the WLB Debtors and the Conflicts Committee will undertake the same careful vetting process with the assistance of the their respective professional advisors. Accordingly, the Debtors believe that the Stalking Horse Bidder (or other successful bidder) and APAs (or marked APAs) should be entitled to the protections of section 363(m) of the Bankruptcy Code.[16]

II. Assumption and Assignment of the Executory Contracts is Warranted.

46. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor in possession "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). The standard governing bankruptcy court approval of a debtor's decision to assume or reject an Executory Contract is whether the debtor's reasonable business judgment supports assumption or rejection. Richmond Leasing Co. v. Capital Bank, N.A., 762 F.2d 1303, 1309 (5th Cir. 1985) ("As long as assumption … appears to enhance a debtor's estate, court approval of a debtor[]'s decision to assume … should only be withheld if the debtor's judgment is clearly erroneous, too speculative, or contrary to the provisions of the

[16] The Sale Order also contains customary terms related to the limitation of any purchaser's liability as a successor-in-interest after purchasing the Assets. The Debtors submit that the facts set forth in this section provides the basis for such a finding by the Court.

Bankruptcy Code.") (internal quotations omitted); GBL Holding Co., Inc. v. Blackburn/Travis/Cole, Ltd., 331 B.R. 251, 255 (N.D. Tex. 2005) (same). "Further, a debtor-in-possession may assign an executory contract or an unexpired lease of the debtor if it assumes the agreement in accordance with section 365(a), and provides adequate assurance of future performance by the assignee." In re Dura Auto. Sys., Inc., No. 06-11202, 2007 WL 7728109, at *97 (Bankr. D. Del. Aug. 15, 2007).

47. The assumption and assignment of certain Executory Contracts will be an important component of the sale of the Assets. For example, much of the value of certain Assets comes from the Debtors' coal leases that provide the right to mine coal on the underlying property. It is thus an appropriate exercise of business judgment for the Debtors to agree to assume and assign the Executory Contracts.

48. Additionally, the Debtors submit that the individualized notice provisions and objection deadline for counterparties to raise objections to the assumption and assignment of the Executory Contracts, as proposed in this Expedited Motion, are adequate to protect the rights of counterparties to the Debtors' Executory Contracts.[17] Further, the Debtors will demonstrate adequate assurance of future performance at the hearing on this Expedited Motion.

49. Upon finding that a debtor has exercised its business judgment in determining that assuming an Executory Contract 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, i.e., that a debtor or assignee (a) cure, or provide adequate assurance of promptly curing, prepetition defaults under the Assigned Contract; (b) compensate parties for pecuniary losses

[17] The form notice, attached as Exhibit E, hereto, lists all of the Executory Contracts that may be assumed and assigned as part of the Sale Transaction. Further, Exhibit E separates those Executory Contracts related to the Oxford Assets from those related to the Buckingham Mine. However, the notice that holders of Executory Contracts will actually receive will be individualized.

arising therefrom; and (c) provide adequate assurance of future performance thereunder. See 11 U.S.C. § 365(b)(1). This subsection "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[.]" Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.), 103 B.R. 524, 538 (Bankr. D.N.J. 1988) (internal citations and quotation marks omitted).

50. The Debtors submit that the statutory requirements of sections 365(b)(1) and 365(f)(2)(A) of the Bankruptcy Code will be satisfied because the APAs or the asset purchase agreements executed by any other Successful Bidder will require such Successful Bidders to cure all defaults associated with, or that are required to properly assume, the Executory Contracts (to the extent that such agreements have not already been assumed and defaults cured). In addition, this Expedited Motion provides a clear process by which to provide notice of and resolve all Cure Objections and Adequate Assurance Objections (both as defined below). As explained further below, any outstanding Cure Costs (as defined below) will be identified and any disputes with nondebtor contract counterparties can be identified and resolved or adjudicated. Finally, the procedures described herein provide nondebtor counterparties to Executory Contracts with (a) notice of the identity of the Stalking Horse Bidder and any other party that is a Successful Bidder and (b) an opportunity to raise issues relating to such party's ability to provide adequate assurance of future performance consistent with section 365(f)(2)(B) of the Bankruptcy Code.

51. In particular, any amounts required to be paid to cure defaults under any Assigned Contract (any such cost, a "Cure Cost") will be detailed on the Assumption/Assignment Notice to be provided to each contract counterparty. To the extent any counterparty disagrees with the proposed Cure Cost thereon, such party may file a "Cure Objection" on or before February 1,

2019, at 12:00 p.m. (prevailing Central Time) (the "Assignment and Cure Objection Deadline"). If any Cure Objections have been filed by the Assignment and Cure Objection Deadline, there will be a separate hearing to resolve such Cure Objection(s), if any such objections have not been prior to the entry of the Sale Order.

52. To the extent the closing of the sale of the Assets has occurred prior to the resolution of any outstanding Cure Objections, the applicable Executory Contracts will be conditionally assumed and assigned as of the date of the closing of the sale, subject to the consent of the Stalking Horse Bidder or other successful bidder, pending a resolution of the objection after notice and a hearing. If a Cure Objection is not satisfactorily resolved, the Stalking Horse Bidder or other successful bidder may determine that such Assigned Contract should be rejected and not assigned, in which case the Stalking Horse Bidder or other successful bidder will not be responsible for any Cure Costs in respect of such contract.

53. Similarly, all objections relating to adequate assurance of future performance, as required by sections 365(b)(1)C) and 365(f)(2)(B) of the Bankruptcy Code, related to the Stalking Horse Bidder's purchase of the Assets (an "Adequate Assurance Objection") must also be filed by the Assignment and Cure Objection Deadline. If a bidder other than the Stalking Horse Bidder is the Successful Bidder, contract counterparties shall have until the Sale Hearing to raise any Adequate Assurance Objection (the "Supplemental Sale Objection Deadline"). The Debtors will either consensually resolve or obtain the withdrawal of any Adequate Assurance Objection received prior to the Sale Hearing. If such an Adequate Assurance Objection has not been resolved prior to the Sale Hearing, such objections shall be heard and resolved thereat.

III. The Sale Process Is Proper and Appropriate

54. The sale and marketing process, including the related Bidding Procedures, that the Debtors will have implemented prior to the Hearing provides an appropriate framework for selling the Assets and will enable the Debtors to fully review, analyze and compare all bids received to determine which bid is in the best interests of the Debtors' estates. The Debtors recognize that it is typical to first obtain approval of bidding procedures prior to seeking approval of a sale of assets.

55. However, given the declining value of the Assets, the February 12, 2019 outside date to complete the transaction contemplated by the Stalking Horse Bid and the results of the marketing process to date, the Debtors decided that this was the only possible path ensuring an expedited market test of the Stalking Horse Bid. Courts have recognized that employing a competitive bidding process is the best way to establish the value of an estate's assets. See In re FPMC Austin Realty Partners, LP, 573 B.R. 679, 688 (Bankr. W.D. Tex. 2017) (noting that property is often sold in bankruptcy cases pursuant to an auction, because "an auction is usually the best way to encourage those bidders to increase the ultimate purchase price"); Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship, 526 U.S. 434, 457 (1999) (stating, with respect to the disposition of estate assets in bankruptcy, that "the best way to determine value is exposure to a market") (citation omitted); see also Trans World Airlines, Inc., No. 01-00056, 2001 WL 1820326, at *4 (Bankr. D. Del. 2001) ("[S]ection 363(b) sale transaction does not require an auction procedure, … [t]he auction procedure has developed over the years as an effective means for producing an arm's-length fair value transaction").

56. The Debtors have determined that subjecting the Assets to one final market test via implementation of the Bidding Procedures will ensure that the APAs provide the highest or otherwise best value for the Assets under the circumstances. Given Lazard's and Centerview's

significant marketing efforts to date, they possess a unique knowledge of the Oxford Assets and Buckingham Mine, respectively, and potential bidders. The Debtors designed the Bidding Procedures to continue pursuing market interest in the Assets, while providing the Debtors with appropriate flexibility to pursue a sale of the Assets on the expedited timeline required by the Stalking Horse Bidder. Adequate "market exposure" and an open and fair bidding process (including, where appropriate, an auction) – i.e., the best means for establishing the most reasonable price for the Assets – will ultimately inform the fairness and reasonableness of the consideration the successful bidder(s) ultimately pays for the Assets. As described above, the marketing process for the WMLP Debtors' assets, and for the WLB Debtors' non-core assets, which include the Buckingham Assets, began in earnest on August 7, 2018 and August 15, 2018, respectively. Both processes have continued after the Petition Date.

57. Debtors have used similar procedures in other complex chapter 11 cases. See, e.g., In re Cobalt Int'l Energy, Inc., No. 17-36709 (MI) (Bankr. S.D. Tex. Jan. 25, 2018) (approving similar bidding procedures); In re EMAS CHIYODA Subsea Ltd., No. 17-31146 (MI) (Bankr. S.D. Tex. Apr. 24, 2017) (same); In re Vanguard Nat. Res., LLC, No. 17-30560 (MI) (Bankr. S.D. Tex. Apr. 13, 2017) (same); In re Sherwin Alumina Co., LLC, No. 16-20012 (DRJ) (Bankr. S.D. Tex. Mar. 16, 2016) (same); In re Luca Int'l Grp., LLC, No. 15-34221 (DRJ) (Bankr. S.D. Tex. Feb. 1, 2016) (same); In re RAAM Global Energy Co., No. 15-35615 (MI) (Bankr. S.D. Tex. Dec. 2, 2015) (same).

58. Accordingly, the Debtors submit that their use of the Bidding Procedures is appropriate and should be approved and ratified.

IV. The Termination Payment Contained in the Oxford APA Has a Sound Business Purpose and Should Be Approved

59. The Oxford APA provides for a Termination Payment of $250,000, which the Stalking Horse Bidder would receive upon the occurrence of certain events typical and customary for transactions of this kind.[18] The Debtors believe that the Termination Payment was necessary for the Stalking Horse Bidder to enter into the Oxford APA. In addition, the Debtors believe that the presence of the Stalking Horse Bidder will establish a baseline value for the Assets and attract other potential buyers to bid for the Assets, thereby maximizing the realizable value of the Assets for the benefit of the WMLP Debtors' estates, creditors and other parties-in-interest.

60. Approval of the Termination Payment to the Stalking Horse Bidder is governed by standards for determining the appropriateness of bid protections in the bankruptcy context. Courts have identified at least two instances in which bid protections, like the Termination Payment may benefit the estate.[19] First, a break-up fee or expense reimbursement may be necessary to preserve the value of the estate if assurance of the fee "promote[s] more competitive

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[18] For the avoidance of doubt, the Buckingham APA does not contain any Termination Payment.

[19] To date, the Fifth Circuit does not appear to have conclusively adopted a test for determining whether bid protections are proper; however, several courts from within the various districts within Texas have tacitly approved the Third Circuit's O'Brien decision and related test, requiring the debtors to demonstrate that the bid protections are necessary to preserve the value of the estate. See, e.g., In re TriDimension Energy, L.P., No. 10-33565 (Bankr. N.D. Tex. Oct. 19, 2010 and Oct. 29, 2010) (Docket Nos. 365 (motion) and 399 (order)) (requesting and approving bid procedures including bid protections as being necessary to preserve the value of the estate by citing to O'Brien); In re CDX Gas, LLC, No. 08-37922 (Bankr. S.D. Tex. Apr. 21, 2009 and May 13, 2009) (Docket Nos. 503 (motion) and 568 (order), respectively) (same).

Other courts in the jurisdictions within Texas, representing the more recent trend, have tacitly approved the more lenient rules adopted by the Southern District of New York in Official Committee of Subordinated Bondholders v. Integrated Resources, Inc. (In re Integrated Resources, Inc.), 147 B.R. 650 (S.D.N.Y. 1992), and have analyzed bid protections in the same manner as standard bid procedures under a "business judgment" standard. See, e.g., In re HBT JV, LLC, No. 17-40659 (Bankr. N.D. Tex. Feb. 20, 2017 and Mar. 17, 2017) (Docket Nos. 9 (motion) and 111 (order)) (requesting and approving bid protections as proper pursuant to the debtors' "business judgment," under which such provisions are "presumptively valid") In re Sears Methodist Ret. Sys., Inc., No. 14-32821 (Bankr. N.D. Tex. Nov. 24, 2014 and Dec. 24, 2014) (Docket Nos. (motion) 583 and 640 (order)) (same).

Although the precedent seems to be split, the O'Brien court espouses a more burdensome standard, and, thus, this Expedited Motion will assume such test applies.

bidding, such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited." Calpine Corp. v. O'Brien Envtl. Energy, Inc. (In re O'Brien Envtl. Energy, Inc.), 181 F.3d 527, 533 (3d Cir. 1999) (hereinafter, "O'Brien"); see also In re TriDimnesion Energy L.P., No. 10-33565, 2010 WL 5209233, at *2 (Bankr. N.D. Tex. Oct. 29, 2010) (noting that the proposed bid protections, which were necessary to induce a stalking horse bid, were "part of an extensive process undertaking by the Debtors and their professionals to identify and negotiate a transaction that the Debtors believe to be the highest or best proposal for an acquisition of the Debtors' assets, in order to maximize the value realized for the benefit of the Debtors' estates…."). Second, if the availability of break-up fees and expense reimbursements were to induce a bidder to research the value of the debtor and convert the value to a dollar figure on which other bidders can rely, the bidder may have provided a benefit to the estate by increasing the likelihood that the price at which the debtor is sold will reflect its true worth. See O'Brien, 181 F.3d at 533.

61. In O'Brien, the court reviewed the nine factors set forth by the lower court as relevant in deciding whether to award a break up fee. Such factors are as follows:

(a) the presence of self-dealing or manipulation in negotiating the fee;

(b) whether the fee harms, rather than encourages, bidding;

(c) the reasonableness of the fee relative to the purchase price;

(d) whether the unsuccessful bidder placed the estate property in a "sales configuration mode" to attract other bidders to the auction;

(e) the ability of the request for a fee to serve to attract or retain a potentially successful bid, establish a bid standard or minimum for other bidders, or attract additional bidders;

(f) the correlation of the fee to a maximization of value of the debtor's estate;

(g) the support of the principal secured creditors and creditors' committees of the break-up fee;

(h) the benefits of the safeguards to the debtor's estate; and

(i) the substantial adverse impact of the break-up fee on unsecured creditors, where such creditors are in opposition to the break-up fee.

See O'Brien, 181 F.3d at 536.

62. The Termination Payment set forth in the Oxford APA falls squarely within the O'Brien factors. For example, it will enable the Debtors to secure an adequate floor for the Assets and, thus, insist that competing bids be materially higher or otherwise better than the Oxford APA and attracts other potential buyers to bid for the Assets subject to the Oxford APA – a clear benefit to the Debtors' estates. See In re Redwine Res., Inc., No. 10-34041, 2010 WL 5209287, at *4 (Bankr. N.D. Tex. June 24, 2010) (noting that the bid protections provided the debtors "with an established minimum floor bid" for the assets). Moreover, the Stalking Horse Bidder would not agree to act as a stalking horse without the Termination Payment, and there has been no self-dealing or manipulation in the negotiation thereof. See In re TriDimnesion Energy L.P., No. 10-33565, 2010 WL 5209233, at *2 (Bankr. N.D. Tex. Oct. 29, 2010) (approving a break-up fee and noting that the proposed break-up fee was "necessary to induce the Potential Buyer to serve as a 'stalking horse' bidder and to continue to pursue the transaction"). Without the Termination Payment, the WMLP Debtors might lose the opportunity to obtain the highest or best offer for the Oxford Assets and would certainly lose the downside protection that would be afforded by the existence of the Stalking Horse Bidder. Furthermore, without the benefit of the Stalking Horse Bidder, the bids received at Auction for the WMLP Assets could be substantially worse than that offered by the Stalking Horse Bidder.

63. The Termination Payment is reasonable and appropriate in light of the size and nature of the transaction and the efforts that have been and will be expended by the Stalking

Horse Bidder. Moreover, the Termination Payment is actually necessary to preserve the value of the estate. First, the Termination Payment represents a small percentage of the total consideration that the Stalking Horse Bidder is providing the Debtors' estates.[20] At just $250,000, the Termination Payment will not significantly impact the aggregate value of the WMLP Debtors' estates. Additionally, the Termination Payment was heavily negotiated in good faith, and was necessary to secure the Stalking Horse Bidder's commitment under the Oxford APA.

64. In sum, the WMLP Debtors' ability to offer Termination Payment enables them to ensure the sale of the Assets at a price they believe to be fair while, at the same time, providing them with the potential of even greater benefit to the estates. The WMLP Debtors do not intend to terminate the Oxford APA if to do so would incur an obligation to pay Termination Payment, unless to consummate an alternative transaction, for which the alternate bid must exceed the consideration offered by the Stalking Horse Bidder by an amount sufficient to pay the Termination Payment.

65. This and other courts have approved protections similar, and more robust, than the Termination Payment as reasonable and consistent with the type and range of bidding protections typically approved, several of which also approved such protections with administrative expense status. See, e.g., In re HBT JV, LLC, No. 17-40659 (Bankr. N.D. Tex. Mar. 17, 2017) (approving bid protections, including the potential expense reimbursement and break-up fee of up to 3% of the purchase price, which were requested to constitute administrative expenses); In re Sears Methodist Ret. Sys., Inc., No. 14-32821 (SGJ) (Bankr. N.D. Tex. Dec. 24,

[20] Pursuant to the terms of the APAs, the Stalking Horse Bidder's consideration under the APAs is primarily the assumption of liabilities, including liabilities that are contingent and/or unliquidated. Therefore, it is impossible to calculate the cost of the Termination Payment as a percentage of the consideration being provided by the Stalking Horse Bidder. However, due to the fact that the Termination Payment is only $250,000, the Debtors respectfully submit that the Termination Payment is well below the range of similar fees previously approved by courts in this district. See ¶ 60, *infra*.

2014) (Docket No. 640) (approving a break-up fee of $1.2 million (i.e., 2.8% of stalking horse bid) and expense reimbursement of up to $100,000 in connection with sale of $42.5 million of assets, each with administrative expense status); In re TriDimension Energy L.P., No. 10-33565 (Bankr. N.D. Tex. Oct. 29, 2010) (Docket No. 399) (approving break-up fee of 2.6% of the purchase price as an administrative expense claim).

66. Accordingly, the Debtors submit that the Termination Payment reflects a sound business purpose, is fair and appropriate under the circumstances and, because the standard used by courts in this district in approving similar protections has been satisfied here, the Debtors respectfully submit that the Termination Payment should be approved.

V. The Debtors' Use of the Proposed Notice of the Sale Hearing is Adequate and Appropriate.

67. Pursuant to Bankruptcy Rule 2002(a) and the Complex Case Procedures, the Debtors must provide their creditors with 21 days' notice of the Sale Hearing. Under Bankruptcy Rule 2002(c), such notice must include the date, time and place of the potential Auction and the Sale Hearing, and the deadline for filing any objections to the relief requested in this Expedited Motion. However, for the reasons described in paragraphs 18 through 24, the Debtors have filed this Expedited Motion on an expedited basis pursuant to Local Bankruptcy Rule 9013-1(i).

68. As noted above, the Debtors intend to implement the following deadlines for objecting to the approval of the proposed Sale Transactions: (a) no later than February 1, 2019 at 12:00 p.m. (prevailing Central Time) (the "Objection Deadline") for all objections to the potential Sale Transactions and the terms contained in this Expedited Motion, the APAs and the proposed Sale Order; and (b) a party objecting to any specific issues relating to any revised asset

purchase agreement and proposed Sale Order (in the event of a successful bid other than the Stalking Horse Bid) may raise such objection at the Sale Hearing.

69. Within three business days after filing of this Expedited Motion, the Debtors will serve the proposed Auction and Hearing Notice by overnight mail upon the following parties (collectively, the "Notice Parties"): counsel to (a) the Office of the United States Trustee for the Southern District of Texas; (b) the indenture trustee under the WLB Debtors' 8.75% senior secured notes due 2022; (c) the ad hoc group of lenders under the WLB Debtors' prepetition term loan due 2020 and the WLB Debtors' 8.75% senior secured notes due 2022; (d) the administrative agent under the WLB Debtors' prepetition term loan facility due 2020; (e) the administrative agent under the WLB Debtors' bridge loan facility due 2019; (f) the administrative agent under the WMLP Debtors' term loan facility due 2018; (g) the ad hoc committee of certain lenders under the WMLP Debtors' term loan facility due 2018; (h) the administrative agent under the WLB Debtors' debtor-in-possession financing facility; (i) the lenders under the WLB Debtors' debtor-in-possession financing facility; (j) the Creditors' Committee and any other statutory committee appointed in these cases; (k) the United States Attorney's Office for the Southern District of Texas; (l) all taxing authorities having jurisdiction over any of the Assets, including the Internal Revenue Service; (m) the United States Environmental Protection Agency and similar state environmental agencies for states in which the Debtors conduct business; (n) the offices of the attorneys general for the states in which the Debtors operate; (o) the United States Securities and Exchange Commission; (p) the Stalking Horse Bidder; (q) all sureties that have issued bonds relating to the Assets; (r) all parties that are known or reasonably believed to have expressed an interest in acquiring the Assets; (s) all parties that are known or reasonably believed by the WMLP Debtors to have asserted any lien, encumbrance, claim or other interest in the Assets; (t)

governmental agencies that are known or reasonably believed by the WMLP Debtors to be an interested party with respect to any Sale Transactions; (u) nondebtor counterparties to the Executory Contracts; (v) the Pension Benefit Guaranty Corporation; (w) any party who, within the past year, expressed in writing to the WMLP Debtors an interest in the Assets; (x) the United Mine Workers of America; (y) any party that has requested notice pursuant to Bankruptcy Rule 2002; and (z) all other parties (if any) identified by the WMLP Debtors as having a particular interest in the Assets. Further, within three days of the filing of this Expedited Motion, the Debtors will serve all of the Debtors' remaining creditors via first class mail.

70. The Auction and Hearing Notice will indicate that copies of this Expedited Motion and any future sale documents, if applicable (including the Bidding Procedures Order, the APAs, forms of asset purchase agreement, the form of Sale Order and any Successful Bid Notice), are available on the website of the Debtors' claims and noticing agent, at www.donlinrecano.com/westmoreland (the "Restructuring Website"). In addition, within five business days after the filing of this Expedited Motion, or as soon as practicable thereafter, the Debtors will cause the Publication Notice to be (a) published for one day in USA Today; (b) the Columbus Dispatch; (c) the Charleston Gazette; (d) the Louisville Courier-Journal; (e) the Athens Messenger; and (f) posted on the Restructuring Website (i.e., www.donlinrecano.com/westmoreland)

71. As Bankruptcy Rule 2002(c) and the Complex Case Procedures require, the Auction and Hearing Notice will include (among other things) the following: (a) the proposed date, time and place of the Auction and the Sale Hearing; (b) information about the Assets, the sale process and the potential terms of sale (including with respect to the Stalking Horse Bid); and (c) the deadline for filing any objections to the relief requested in this Expedited Motion. The

methods of notice described herein comply fully with Bankruptcy Rule 2002 and the Complex Case Procedures (as modified by Local Bankruptcy Rule 9013-1(i)) and constitute good and adequate notice of the proposed sale of the Assets.

VI. Waiver of Bankruptcy Rules 6004(h) and 6006(d).

72. The Debtors request that, upon entry of a Sale Order, the Court waive the 14-day stay requirements of Bankruptcy Rules 6004(h) and 6006(d). The waiver of the 14-day stay imposed by Bankruptcy Rules 6004(h) and 6006(d) will allow any Sale Transactions to close as soon as possible and prevent further delay in the administration of these cases. In addition, because many of the Assets impose holding costs on the Debtors during their period of ownership and control, any delay in closing may diminish the Debtors' estates to the detriment of creditors. Thus, the Debtors respectfully submit that a waiver of the 14-day stay requirements contained in Bankruptcy Rules 6004(h) and 6006(d) is appropriate under the circumstances.

Notice

73. Notice of this Expedited Motion will be provided via overnight mail to: counsel to (a) the Office of the United States Trustee for the Southern District of Texas; (b) the indenture trustee under the WLB Debtors' 8.75% senior secured notes due 2022; (c) the ad hoc group of lenders under the WLB Debtors' prepetition term loan due 2020 and the WLB Debtors' 8.75% senior secured notes due 2022; (d) the administrative agent under the WLB Debtors' prepetition term loan facility due 2020; (e) the administrative agent under the WLB Debtors' bridge loan facility due 2019; (f) the administrative agent under the WMLP Debtors' term loan facility due 2018; (g) the ad hoc committee of certain lenders under the WMLP Debtors' term loan facility due 2018; (h) the administrative agent under the WLB Debtors' debtor-in-possession financing facility; (i) the lenders under the WLB Debtors' debtor-in-possession financing facility; (j) the Creditors' Committee and any other statutory committee appointed in these cases; (k) the

United States Attorney's Office for the Southern District of Texas; (l) all taxing authorities having jurisdiction over any of the Assets, including the Internal Revenue Service; (m) the United States Environmental Protection Agency and similar state environmental agencies for states in which the Debtors conduct business; (n) the offices of the attorneys general for the states in which the Debtors operate; (o) the United States Securities and Exchange Commission; (p) the Stalking Horse Bidder; (q) all sureties that have issued bonds relating to the Assets; (r) all parties that are known or reasonably believed to have expressed an interest in acquiring the Assets; (s) all parties that are known or reasonably believed by the Debtors to have asserted any lien, encumbrance, claim or other interest in the Assets; (t) governmental agencies that are known or reasonably believed by the Debtors to be an interested party with respect to any Sale Transactions; (u) nondebtor counterparties to the Executory Contracts; (v) the Pension Benefit Guaranty Corporation; (w) any party who, within the past year, expressed in writing to the Debtors an interest in the Assets; (x) the United Mine Workers of America; and (y) any party that has requested notice pursuant to Bankruptcy Rule 2002. Additionally, the Debtors will serve all of the Debtors' remaining creditors via first class mail. In light of the nature of the relief requested, the Debtors submit that no further notice is necessary.

Expedited Relief

74. As explained in detail above, time is of the essence. It is in the best interest of the Debtors' estates to enter into an expedited sale process to avoid being without a buyer for the Assets. There are several reasons driving the need for an expedited process. The expedited sale process is required because of the February 12, 2019 outside date of the Stalking Horse Bid. Additionally, the continued maintenance and operation of the Assets provides little (if any) positive economic benefit to the estates and the value of the Buckingham Mine is largely tied to a coal supply agreement that will expire as of December 31, 2019, so the economics associated with

the Assets will continue to decline as time passes. Finally, the Oxford Assets provide little (if any) realizable value to the WMLP Debtors, and the sale process must be consummated prior to March 31, 2019 under the terms of the Final Cash Collateral Order, so time is of the essence.

WHEREFORE, the Debtors respectfully request that the Court (i) enter the Bidding Procedures Order substantially in the form attached hereto as Exhibit A; (ii) after a Sale Hearing, enter one or more Sale Orders approving the sale of Assets to Successful Bidder(s); and (iii) grant such other and further relief to the Debtors as the Court may deem proper.

Dated: January 22, 2019
Houston, Texas

Respectfully submitted,

/s/ Oliver S. Zeltner

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Houston, Texas
January 22, 2019

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Certificate of Service

I certify that on January 22, 2019, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Patricia B. Tomasco
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