

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

In re:) Chapter 11
)
Blackjewel, L.L.C., *et al.*,) Case No. 19-bk-30289)
) (Joint Administration Requested)
Debtors.¹

MOTION OF DEBTORS FOR ENTRY OF (I) AN ORDER (A) APPROVING BIDDING PROCEDURES, (B) SCHEDULING AN AUCTION, SALE HEARING AND OTHER DATES AND DEADLINES, (C) APPROVING CONTURA ENERGY, INC. AS A STALKING HORSE PURCHASER, (D) APPROVING THE ASSUMPTION AND ASSIGNMENT OF CONTRACTS AND LEASES AND RELATED CURE PROCEDURES, (E) APPROVING THE PURCHASE DEPOSIT, (F) AUTHORIZING TERMINATION OF THE 401(K) PLAN AND (G) GRANTING RELATED RELIEF, AND (II) AN ORDER APPROVING THE SALE OF THE PURCHASED ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES

Blackjewel, L.L.C., and its affiliated debtors and debtors-in-possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases, hereby move this Court, pursuant to sections 105, 363 and 365 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6004, 6006, 9008 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 6004-1 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of West Virginia (the “Local Rules”) for (i) entry of an order (the “Bidding Procedures Order”), substantially in the form attached hereto as **Exhibit A**, that (a) establishes bidding procedures, approves Contura Energy, Inc. (“Contura”) as the stalking horse purchaser for certain assets, and otherwise formalizes and governs the sale process for the Debtors’ assets consistent with the term sheet attached hereto as **Exhibit B** (the “Term

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor’s taxpayer identification number are as follows: Blackjewel, L.L.C. (0823); Blackjewel Holdings L.L.C. (4745); Revelation Energy Holdings, LLC (8795); Revelation Management Corporation (8908); Revelation Energy, LLC (4605); Dominion Coal Corporation (2957); Harold Keene Coal Co. LLC (6749); Vansant Coal Corporation (2785); Lone Mountain Processing, LLC (0457); Powell Mountain Energy, LLC (1024); and Cumberland River Coal LLC (2213). The headquarters for each of the Debtors is located at 1051 Main Street, Milton, West Virginia 25541-1215.

Sheet”), (b) approves the liens and claims granted in connection with the Purchase Deposit, and (c) authorizes the termination of the Debtors’ 401(k) Plan (as defined below);² and (ii) entry of a sale order (the “Sale Order”) following an auction (if necessary) (the “Auction”) and sale hearing (the “Sale Hearing”), that will approve the sale of assets by the Debtors to the bidder or bidders that submit the highest and best bid, including bids free and clear of liens, claims and encumbrances, in a manner consistent with the dates, deadlines and other requirements provided for herein (the “Successful Bid(s)”). In support of this motion, the Debtors rely upon and incorporate by reference the (i) *the Declaration of David J. Beckman in Support of Sale Motion* (the “Beckman Declaration”), and (ii) *the Declaration of Robert J. White in Support of Sale Motion* (the “White Declaration”). In further support of this motion, the Debtors respectfully state as follows:

PRELIMINARY STATEMENT

1. As the Court is aware, the Debtors filed these chapter 11 cases under incredibly difficult and exigent circumstances. As a result of the Debtors’ dire liquidity crisis and the deteriorating value of the estate, the Debtors have had no choice but to shut down active coal production, and many of their employees have been furloughed without pay since the commencement of these cases. Moreover, the Debtors face increasing pressure from governmental regulators due to their inability to pay taxes, royalties or lease payments and their inability to satisfy legally mandated reclamation obligations. The Debtors have, to this point, avoided a conversion to chapter 7—which would result in further destruction of value, to the detriment of all the Debtors’ creditors, employees and other stakeholders—due to the short-term

² Capitalized terms used but not otherwise defined herein shall have the meaning ascribed in the Term Sheet.

incremental rescue financing provided by certain parties in interest. While the Debtors and their advisors have been intensely focused on trying to obtain long-term financing necessary to restart operations, return the Debtors' employees to work, and conduct a value-maximizing going-concern sale process, no party willing to provide such financing has materialized. The Debtors' existing short-term funding has now been exhausted, and absent additional short-term funding and a viable long-term strategic plan, a conversion to chapter 7 is inevitable.

2. After weeks of negotiations with many of the Debtors' stakeholders—including the Debtors' prepetition senior lenders and debtor-in-possession financing lenders, Contura, the Creditors' Committee, the State of Wyoming and the U.S. Department of Justice—the Debtors have now secured the best outcome possible under these circumstances, to the benefit of all stakeholders and employees of the Debtors, with the help and support of Contura. These negotiations culminated in the agreement between the Debtors and Contura to the terms and conditions of the sale transactions set forth in the Term Sheet (the "Stalking Horse Sale"), which will ensure that the Western Mines and the Pax Mines are restored to operating status and up to 700 Wyoming residents are able to continue earning regular wages in jobs associated with the mines for an estimated minimum of six to twelve years. Pursuant to the terms of the Stalking Horse Sale and subject to Court approval and higher and better bids, Contura has agreed to purchase, and the Debtors have agreed to sell, substantially all assets associated with the Western Mines and the Pax Mines in exchange for (i) the assumption of hundreds of millions of dollars in liabilities associated with such assets, including payroll-related payments for employees returning to work in the Western Mines, and (ii) cash consideration in the amount of \$20.6 million to be used to administer and keep alive the Debtors' estates and provide cash necessary

to achieve other recoveries. Critically, Contura has agreed to fund a cash deposit toward the purchase price under the Stalking Horse Sale immediately upon entry by the Court of the Bidding Procedures Order, and to allow the Debtors to use this deposit to pay anticipated expenses through the conclusion of an expedited, but efficient sale process for substantially all of their assets. The deposit will only be repaid if Contura's bid is topped by a higher and better bid (in which case, the Successful Bidder will be obligated to repay such amounts pursuant to the Term Sheet) or if no sale of the Western/Pax Assets to any party is approved by the Court (in which case, the Debtors will return unused amounts from the deposit and Contura will have a super-priority junior secured claim against the Debtors for the balance).

3. The Debtors and their advisors have determined that the sale process for which the Debtors seek approval, including the terms of the Stalking Horse Sale, is the only opportunity to maximize value, avoid a permanent operational shutdown of the Western Mines and the Pax Surface Mine, return as many employees to work as possible and ensure that, ultimately, the necessary reclamation is undertaken with respect to those mines. Indeed, pursuant to the Term Sheet, Contura commits to bring back the majority of employees at the sites it seeks to purchase if the Stalking Horse Sale is consummated and assume hundreds of millions of dollars of liabilities currently burdening these assets. The transaction would further provide real value to the Debtors' creditors through the cash consideration provided under the Stalking Horse Sale, which will be available, after satisfaction of certain administrative expenses, for distribution to the Debtors' creditors. Moreover, Contura's agreement to fund the sale process through a purchase deposit is absolutely critical, without which no sale process could occur and significant potential value for the Debtors' estates would be lost altogether. The stalking horse bid and

purchase deposit allow the Debtors and their advisors the breathing room necessary to allow them to focus on what is important – achieving a successful sale (or sales) and getting as many people back to work as quickly as possible. Without Contura’s agreement to the Stalking Horse Sale, including the purchase deposit to fund the sale process, none of that would be possible and the Debtors would likely be forced to immediately convert these cases to cases under chapter 7. Accordingly, the Debtors believe that the sale process described herein is in the best interest of their estates, creditors, and other stakeholders.

JURISDICTION AND VENUE

4. This Court has jurisdiction to consider this motion pursuant to 28 U.S.C. §§ 157 and 1334.

5. This is a core proceeding under 28 U.S.C. § 157(b), and the Debtors consent to entry of a final order by the Court in connection with this motion to the extent it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

6. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory basis for the relief requested herein are sections 105, 363 and 365 of title 11 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9008 and 9014 and Local Rule 6004-1.

BACKGROUND

7. On July 1, 2019 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief with the Court under chapter 11 of the Bankruptcy Code. The Debtors are continuing to operate and maintain their business as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

8. On July 3, 2019, the Office of the United States Trustee for Region 4, the District of West Virginia (the “U.S. Trustee”), appointed an official committee of unsecured creditors [Docket No. 46] (the “Creditors’ Committee”). As of the date hereof, no party has requested the appointment of a trustee or an examiner in these chapter 11 cases.

9. A description of the Debtors’ business and the reasons for filing these chapter 11 cases is set forth in the *Declaration of Jeff A. Hoops, Sr. in Support of Chapter 11 Filings and First-Day Motions* [Doc. No. 14] (the “First Day Declaration”).³

THE DEBTORS’ ASSETS

10. As provided in the First Day Declaration, the Debtors operate approximately 32 properties, including surface and underground coal mines, preparation or wash plants, and loadouts or tipples. Combined, the Debtors and their non-Debtor affiliates hold more than 500 mining permits, which is more than any other mining enterprise in the country.

11. The Debtors’ operations are located in the Central Appalachian Basin in Virginia, Kentucky and West Virginia (the “Eastern Division”) and the Powder River Basin in Wyoming (the “Western Division”). The Eastern Division is divided into four subdivisions – Black Mountain/Lone Mountain, Virginia, BHL, and Northern. Coal mined from the Eastern Division is a mix of mid and high volatility metallurgical coal and specialty and industrial coals, with thermal coal as a by-product. The Eastern Division holds approximately 600 million reserve tons, has an average mine life of 30+ years, and can produce up to 6 million tons per year. The Eastern Division produced 3.3 million tons in 2018.

³ Mr. Hoops resigned his positions as officer and director of each of the Debtors on July 3, 2019 and is no longer involved in the management of the Debtors or their businesses.

12. The Western Division operates the open-pit surface mines commonly known as the Belle Ayr and Eagle Butte mines (the “Western Mines”), both located in northeast Wyoming, and produces low sulfur, sub-bituminous thermal coal. The Western Division holds approximately 600 million reserve tons. The average mine life in the Western Division is 20 years and production capacity is 50 million tons. The Western Division produced 35.5 million tons in 2018.

13. The Eastern Division and Western Division assets (collectively, the “Assets”) are subject to significant permitting, bonding and other governmental, regulatory and environmental requirements that will be addressed through the sale process, including through a possible assignment of governmental permits and other agreements and rights required to operate the near-term producing projects and to continue exploring the other projects. The Assets also include a mix of personal property, water rights, mining and other service contracts, leases and other rights that will need to be assigned or otherwise transferred as part of the sale process.

**POSTPETITION EFFORTS TO MARKET
THE DEBTORS’ ASSETS AND FINANCE THE SALE PROCESS**

14. The Debtors, with the assistance of their investment banker and other professionals have been working diligently to seek out third-party purchasers that may be interested in purchasing substantially all or a portion of the Assets. Specifically, as the date of filing this motion, the Debtors’ advisors have reached out to more than twenty-seven (27) parties to solicit interest in acquiring the Assets. At this time, ten (10) parties have signed non-disclosure agreements and are actively engaged in conducting due diligence (collectively, the “Preliminary Interested Investors”). The Debtors and their professionals are continuing these

efforts and expect additional parties to sign non-disclosure agreements and perform due diligence during the sale process.

15. In tandem with and in order to fund these efforts, the Debtors have sought financing from multiple sources, including the Debtors' prepetition creditors. Notwithstanding their efforts, the Debtors have been unable to obtain traditional long-term debtor-in-possession financing. While the Debtors' prepetition senior secured lenders provided an initial amount of interim financing at the outset of these cases, after weeks of negotiation with the Debtors and their advisors, these lenders ultimately declined to extend the additional financing necessary to allow the Debtors to continue to pursue a value maximizing sale process that would allow the Debtors to achieve the best value for the benefit of all stakeholders. At the eleventh hour, as the Debtors were facing inevitable chapter 7 conversion, funds managed or advised by Highbridge Capital Management, LLC and Whitebox Advisors LLC agreed to provide incremental financing to the Debtors on a junior secured basis. This financing, which Contura has agreed to step into as a lender (if so requested by Highbridge Capital Management, LLC and Whitebox Advisors LLC) pursuant to a separate agreement entered into between Contura and the existing lenders, saved the Debtors' estates from a value destructive liquidation. The Debtors, Contura and each of their respective advisors used the opportunity provided by this incremental financing to formulate a workable sale process and negotiate the Stalking Horse Sale, including Contura's agreement to fund the sale process and provide a stalking horse bid for the Western Purchased Assets and the Pax Purchased Assets. The Debtors' incremental debtor-in-possession financing liquidity has now been exhausted, and absent approval by the court of the sale process proposed herein and Contura's stalking horse bid, the Debtors will ultimately be forced into chapter 7.

OVERVIEW OF THE TERM SHEET

16. As set forth above, subject to Court approval and higher and better bids, the Debtors have agreed to the Stalking Horse Sale with Contura as set forth in the Term Sheet, which provides the terms and conditions upon which Contura will serve as Stalking Horse Purchaser for (a) substantially all of the assets in the Western Division, except for the Western Excluded Assets and the Western Excluded Liabilities, and (b) substantially all of the assets related to the Pax Surface Mines, excluding the Pax Excluded Assets and Pax Excluded Liabilities.

17. The following chart summarizes the key terms and conditions of the Term Sheet:⁴

Term Sheet Provision	Summary Description
Parties	<p><u>Sellers</u>: Blackjewel, L.L.C. and Blackjewel Holdings L.L.C.</p> <p><u>Buyers</u>: One or more subsidiaries of Contura Energy, Inc. (the “<u>Stalking Horse Purchaser</u>”)</p>
Financing/Purchase Price Deposit	<p>In connection with its agreement to serve as Stalking Horse Purchaser, Contura has agreed, subject to entry of the Bidding Procedures Order, to provide a cash deposit equal to \$8.1 million to the Seller Parties (the “<u>Purchase Deposit</u>”), to be applied to the purchase price if the Western/Pax Asset Sale.</p> <p>The Purchase Deposit (and any resulting Superpriority Purchase Price Claim (as defined below)) shall bear interest at a rate of LIBOR + 12.50% (LIBOR floor of 2.00%), which shall be paid in cash on a monthly basis in arrears. To the extent such Purchase Deposit (or resulting Superpriority Purchase Price Claim) or any interest on the Purchase Deposit (or resulting Superpriority Purchase Price Claim) is not paid when due, such amounts shall also bear interest at a rate of 2.00%.</p>

⁴ This summary is provided for the convenience of the Court and parties-in-interest. To the extent there is any conflict between this summary and the Term Sheet, the latter governs in all respects.

	<p>The Purchase Deposit and the proceeds thereof shall be available for use by the Seller Parties, subject to the following conditions:</p> <ul style="list-style-type: none">(a) The Seller Parties must comply with the Budget attached hereto (the "<u>Budget</u>");⁵(b) The Purchase Deposit and all proceeds thereof shall be held in Escrow, subject to release from Escrow for use by the Debtors solely in accordance with the Budget, including, without limitation, deposits into an escrow account maintained for the exclusive benefit of the professionals retained by the Debtors and the Committee of the funds necessary to pay allowed fees and expenses of those professional (the "<u>Professional Escrow</u>"). For the avoidance of doubt, the Professional Escrow shall not be subject to any lien or security interest and is and shall be maintained for the exclusive benefit of estate professionals even in the event of a future conversion to chapter 7 or dismissal of these cases; and <p>Any other Bid for the Western/Pax Assets that is a Qualified Bid must include, as a part of such bid, reimbursement to Contura of the Purchase Deposit (in cash in full), unless waived by Contura</p>
<p>Purchase Deposit Liens/Claims</p>	<p>To the extent that the Debtors use the Purchase Deposit and solely in the event that the Court does not approve a sale of the Western/Pax Assets either to Contura or to another Bidder that reimburses Contura for the Purchase Deposit, Contura shall receive a dollar-for-dollar superpriority claim (the "<u>Superpriority Purchase Deposit Claims</u>") against all Debtors, which claims shall be junior to any allowed superpriority administrative claims granted in connection with the Riverstone DIP Facility and pari passu to the administrative claims granted in connection with the Highbridge/Whitebox DIP Facility but shall be senior to all other administrative expenses, and which claim shall be granted:</p>

⁵ A copy of the Budget is attached hereto as Exhibit C.

	<p>(a) Liens on all present and after-acquired property (whether tangible, intangible, real, personal or mixed and wherever located) of the Debtors that were not subject to validly perfected liens as of the Petition Date, including without limitation proceeds of avoidance actions, which liens shall be junior to (1) any liens (the “<u>Riverstone DIP Liens</u>”) securing the existing interim DIP financing provided by Riverstone Credit Partners – Direct, L.P. (the “<u>Riverstone DIP Facility</u>”) and (2) any liens (the “<u>HB/WB DIP Liens</u>”) securing the Highbridge/Whitebox DIP Facility; and</p> <p>(b) Liens on all present and after-acquired encumbered property (whether tangible, intangible, real, personal or mixed and wherever located) of the Debtors that is subject to validly perfected liens as of the date of the filing of the Chapter 11 Cases, which liens shall be junior to the (i) Riverstone DIP Liens, (ii) the HB/WB DIP Liens and (iii) any and all valid, perfected, enforceable and unavoidable liens as of the July 1, 2019 (the “<u>Petition Date</u>”) held or asserted by any person or entity, including, without limitation, Riverstone Credit Partners, United Bank, Inc., Campbell County, Wyoming for unpaid ad valorem taxes, Fifth Third Bank, or Caterpillar Financial Services Corporation (collectively, the “<u>Senior Liens.</u>”)</p> <p>All of the liens granted herein are, to the fullest extent permitted by applicable law, effective and perfected upon entry of the Bidding Procedures Order and without the necessity of the execution of mortgages, security agreements, pledge agreements, financing statements or other agreements.</p> <p>Notwithstanding the foregoing, the Company shall take all actions necessary, desirable and/or reasonably requested by Contura to create and perfect all liens in the collateral securing the Purchase Deposit Superpriority Claims, including in any jurisdiction in which the Bidding Procedures Order is not applicable.</p> <p>In addition, with respect to the Purchase Deposit Superpriority Claims, the Bidding Procedures</p>
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	<p>Order shall provide for waivers of section 506(c), section 552(b)'s equities of the case exception, and any right to apply the equitable doctrine of marshaling (other than as provided in the Bidding Procedures Order), among other customary terms and provisions.</p>
<p>Conditions Precedent to Purchase Deposit</p>	<ul style="list-style-type: none"> • Entry of the Bidding Procedures Order by the Bankruptcy Court which shall be in form and substance acceptable to Contura, and which shall approve and bind the Debtors to comply with this Term Sheet and the Bidding Procedures; and • The Debtors shall file voluntary petitions in the Chapter 11 Cases on behalf of any presently non-debtor entities that own or control any assets (including permits, licenses or leases) necessary or desirable to operate either the Western Purchased Assets or the Pax Purchased Assets; • Delivery of an updated Budget in form and substance acceptable to Contura.
<p>Return of Purchase Price Deposit/Payment of Superpriority Purchase Price Deposit Claim</p>	<p>Any unused Purchase Deposit shall be remitted to Contura and any Superpriority Purchase Deposit Claim (including accrued interest on the Purchase Price Deposit or Superpriority Purchase Deposit Claim) shall be due and owing to Contura, upon the earlier of:</p> <ul style="list-style-type: none"> • A breach of any term of this Term Sheet by the Debtors; • Use of the Purchase Deposit in a manner inconsistent with the Budget; • The approval by the Bankruptcy Court of a Successful Bid for any of the Western Assets or the Pax Assets (unless Contura shall have waived the requirement for such Successful Bid to have reimbursed the Purchase Price Deposit); or • August 5, 2019, unless the Sale Order for each of the Western Assets and the Pax Assets shall have been approved, which

	shall approve the Western Asset Sale and the Pax Asset Sale to Contura.
Western Division Asset Sale	Contura will purchase substantially all of the assets of the Debtors related to the open-pit surface mines and related facilities commonly known as the Belle Ayr mine and the Eagle Butte mine, including all equipment, books and records related thereto, other than the Western Excluded Assets, free and clear of all liens, claims and encumbrances. Contura will assume the Western Assumed Liabilities, but not the Western Excluded Liabilities.
Consideration for the Western Asset Sale and Pax Asset Sale	As consideration for the Western/Pax Assets, Contura will (i) pay \$12.5 million in cash (in addition to the Purchase Deposit), (ii) assume the Western Assumed Obligations and (iii) assume the Pax Assumed Obligations. The consideration will be allocated among the Western/Pax Assets in a manner to be determined.
Western Division Transfer of Leases	The Seller Parties and Contura will cooperate to diligently pursue the transfer to it of all lease agreements (" <u>Leases</u> ") held by the Seller Parties, related to the operation of the Western Mines.
Pax Surface Mine Asset Sale	Contura will purchase substantially all of the assets of the Debtors related to the open-pit surface mine and related facilities commonly known as the Pax Surface Mine, including all equipment, books and records related thereto, other than the Pax Excluded Assets, free and clear of all liens, claims and encumbrances. Contura will assume the Pax Assumed Liabilities, but not the Pax Excluded Liabilities.
Transfer of Pax Permits and Leases	The Seller Parties and Contura will cooperate to diligently pursue the transfer to Contura of all permits, licenses consents, authorizations, permit applications and other approvals (" <u>Permits</u> ") and Leases held by the Sellers Parties and related to the operation of the Pax Mine.
Representations, Warranties and Covenants	The Western Asset Sale and Pax Asset Sale will contain mutually agreeable representations, warranties and covenants consistent with customary bankruptcy practice relating to sales

	<p>conducted pursuant to section 363 of the Bankruptcy Code.</p>
<p>Conditions Precedent to Closing</p>	<p>The Western Asset Sale and the Pax Asset Sale will be subject to customary conditions to the parties' obligations to effect the closing (which may be waived in the sole discretion of Contura), including, but not limited to:</p> <ul style="list-style-type: none"> (a) all specified governmental and regulatory approvals will have been obtained or, if applicable, will have expired, will have been waived by the applicable governmental authority or will have been terminated; (b) there will not be in effect any order by a governmental body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated by this Term Sheet; (c) the Bankruptcy Court shall have approved the assumption and assignment of any unexpired leases or executory contracts constituting Western Purchased Assets or Pax Purchased Assets, as applicable; (d) the Governmental Parties shall have consented to (i) the transfer of the Leases (as defined in the Bidding Procedures) related to the Western Mines and the Pax Mines, and (ii) a mutually agreed settlement regarding any accrued and unpaid royalty payments and production taxes related to the Western Mines or the Pax Surface Mines; (e) the parties will have executed and delivered all Definitive Documents; and (f) the Bankruptcy Court will have entered a Sale Order approving the Western Asset Sale or Pax Asset Sale, as applicable and such Sale Order will not be subject to any stay.

Releases	<p>The Sale Order will provide for customary releases by the Seller Parties of any claims or causes of action against Contura, and the representatives, professionals and other advisors thereof, including but not limited to release of any and all claims, obligations, suits, judgments, damages, rights, causes of action and liabilities of any nature whatsoever (including, without limitation, those arising under the Bankruptcy Code), whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or thereafter arising, in law, equity, or otherwise against the Purchased Assets and Contura and their respective affiliates. In addition, if Sellers file a chapter 11 plan, such plan will include releases and exculpation provisions in favor of Contura and the representatives, professionals and other advisors thereof to the maximum extent permitted by law.</p> <p>For the avoidance of doubt, Contura and the Highbridge/Whitebox DIP Lenders shall not waive, and shall expressly reserve, all claims against the Seller Parties and the Debtors' estates, whether arising under contract, by law, in equity or otherwise.</p>
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THE BIDDING PROCEDURES

A. Need for a Timely Sale Process

18. The proposed bidding procedures (the "Bidding Procedures") for the Purchased Assets and any other portion of the Assets, are attached to the Term Sheet as Exhibit A. The Bidding Procedures are designed to, among other things, (a) solicit final, binding Bids from Preliminary Interested Investors and any other parties that may be interested in submitting a Qualified Bid, (b) enable the Debtors, in consultation with the Consultation Parties, to evaluate the Bids received in a fair and efficient manner and determine which are Qualified Bids, and (c) facilitate competitive bidding in the event that more than one Qualified Bid is submitted for the Purchased Assets or any other portion of the Assets.

19. The Debtors respectfully request that the Court approve the following proposed expedited timeline for the sale process:

Action	Deadline
Bid Deadline	July 31, 2019 at 5:00 p.m. (prevailing Eastern Time)
Auction	August 1, 2019 at 9:00 a.m. (prevailing Eastern Time), if one is needed, which will be held at the offices of Squire Patton Boggs (US) LLP, 201 E. Fourth Street, Suite 1900, Cincinnati, Ohio 45202.
Sale Objection Deadline	August 2, 2019, at any time prior to the commencement of the Sale Hearing.
Sale Hearing	August 2, 2019
Closing Date	August 5, 2019

20. While necessarily extremely short due to the Debtors' limited liquidity, the timeline provides Preliminary Interested Investors with the time necessary to formulate a competitive bid, without unduly prejudicing the Debtors' estates. Importantly, Contura has agreed to finance the sale process on the timeline set forth above through the Purchase Deposit set forth in the Term Sheet. In formulating the sale timeline, the Debtors balanced the need to provide adequate and appropriate notice to parties in interest with the need move as quickly and efficiently as possible to realize on the Contura bid, achieve a successful sale or sales, and return as many employees work as possible. Absent approval of these Bidding Procedures, the Debtors will have no choice but to convert their cases to cases under chapter 7 of the Bankruptcy Code.

21. As described herein, the Debtors and their advisors have been diligently marketing the Assets since the Petition Date to a broad group of strategic and financial buyers

and substantial information regarding the Assets has been made available during the marketing process. Accordingly, the Debtors believe that numerous parties that may have an interest in bidding at the Auction are already familiar with the Purchased Assets for the purposes of formulating their Bids. Preliminary Interested Investors, and any other parties that execute confidentiality agreements, will continue to have access to updated information prepared by the Debtors and a substantial body of information that resides in the Debtors' data room.

B. Overview of the Bidding Procedures

22. The Bidding Procedures are intended, under the exigent circumstances present, to foster a fair and efficient competitive sale process for substantially all of the Debtors' assets that will provide the best opportunity to market test the bids submitted by Contura for the Western Purchased Assets and the Pax Purchased Assets, potentially receive higher and better offers for those assets, and to identify the purchasers for the Debtors' remaining Assets. Because the Bidding Procedures are attached as Exhibit A to the Term Sheet, they are not restated in their entirety herein. Generally speaking, however, the Bidding Procedures establish, among other things:⁶

- a) The requirements that interested parties must satisfy to participate in the bidding process and become "Preliminary Interested Investors" (*see* Bid. Proc., at Preliminary Interested Investors);
- b) The availability of, access to, and conduct during due diligence by Preliminary Interested Investors (*see* Bid. Proc., at Due Diligence);
- c) The deadlines and requirements for submitting competing bids and the method and criteria by which such competing bids are deemed to be "Qualified Bids" sufficient to trigger an Auction, including the minimum

⁶ This summary is provided for the convenience of the Court and parties in interest. To the extent there is any conflict between this summary and the Bidding Procedures, the latter governs in all respects. Capitalized terms used but not otherwise defined in this summary shall have the meanings set forth in the Bidding Procedures.

consideration that must be provided, the terms and conditions that must be satisfied, and deadlines that must be met by any Preliminary Interested Investors (see Bid. Proc., at Qualified Bids);

- d) The manner in which Qualified Bids will be evaluated by the Debtors to determine the Auction Baseline Bid for the Auction (see Bid. Proc., at Auction);
- e) The criteria by which the Successful Bid will be selected by the Debtors (see Bid. Proc., at Auction); and
- f) The condition in which the Assets are to be sold, free and clear of any pledges, liens, security interests, encumbrances, claims, charges, options and interests therein (see Bid. Proc., at Sale Free and Clear; As Is / Where Is).

23. Importantly, the Bidding Procedures include a mechanism that ensures the Debtors' estates will not be left administratively insolvent by the proposed sales. Any Bid for any Lot or combination of Lots must, at a minimum, provide for (i) the performance of the Reclamation Commitments associated with the Lots subject to such Bid and (ii) the payment in cash in full of a pro rata portion of (A) fees owing to the United States Trustee incurred in connection with the Debtors' chapter 11 cases and any fees payable to the Clerk of Court, (B) professional fees, expenses, and disbursements incurred by professional persons employed by the Debtors or the UCC (including any out-of-pocket expenses of the members of the Creditors' Committee) ("Professional Fees and Expenses") incurred on and after the Petition Date, (C) certain other allowed administrative expenses of the Debtors' estates as identified by the Debtors and (D) certain costs necessary to wind-down the Debtors' estates as identified by the Debtors (collectively, the "Carve-Out"). The portion of the Minimum Bid representing the amount of the Carve-Out is to be held by the Debtors in a segregated escrow account, not subject to the lien or security interest of any party including, without limitation, parties providing secured debtor in

possession financing and shall be used solely and exclusively to satisfy the fees, expenses and costs included in the Carve-Out. In the event of a conversion of these chapter 11 cases to cases under chapter 7, the chapter 7 trustee or trustees shall have no right to the segregated account for the Carve-Out and the segregated account shall not be part of the chapter 7 estate or estates.

24. In addition, the Bidding Procedures recognize the Debtors' fiduciary obligations to maximize sale value, and, as such, do not impair the Debtors' ability to consider all Qualified Bids, select higher and better offers, potentially sell their Assets in lots, and preserve the Debtors' right to modify the Bidding Procedures as necessary or appropriate to maximize value for their estates.

STALKING HORSE

25. As discussed herein, the Debtors have selected Contura as the Stalking Horse Purchaser for the Western Purchased Assets and the Pax Purchased Assets. It is possible that other Preliminary Interested Investors are designated as a stalking horse purchaser for other portions of the Assets, but as of the date hereof, only Contura has been designated a Stalking Horse Purchaser. The Debtors request that they be granted the flexibility to designate other Preliminary Interested Investors as stalking horse purchasers and designate Contura as Stalking Horse Purchaser for the Purchased Assets, pursuant to the terms and conditions in the Term Sheet attached hereto.

FORM AND MANNER OF SALE NOTICE

26. Within one (1) business day after entry of the Bidding Procedures Order, or as soon as reasonably practicable thereafter (the "Mailing Date"), the Debtors will serve a notice of the Sale (the "Sale Notice"), substantially in the form attached hereto as **Exhibit D**, by first-class

mail or, for those parties who have consented to receive notice by the Electronic Case Files (“ECF”) system, by ECF, upon the following parties: (a) the Consultation Parties (as defined in the Bidding Procedures); (b) Riverstone; (c) United Bank, Inc.; (d) the Office of the United States Trustee; (e) all counterparties to potentially assigned contracts; (f) any parties known or reasonably believed to have expressed interest in the Assets; (g) all creditors listed in the Debtors’ creditor matrix; (h) all parties who have appeared in these cases; (i) all applicable state and local taxing authorities; and (j) each governmental agency that is an interested party with respect to the sale transactions proposed in the Term Sheet.

27. The Debtors respectfully submit that, under the circumstances, service of the Sale Notice in the manner described herein will provide adequate notice and due process to all parties in interest with respect to the sale process and the proposed sale of the Purchased Assets free and clear of liens, claims, encumbrances and other interests.

RELIEF REQUESTED

28. The Debtors respectfully request that the Court enter the Bidding Procedures Order, substantially in the form attached hereto as **Exhibit A**, granting, among other things, the following relief:

- a) Approving the Term Sheet and Bidding Procedures attached hereto as **Exhibit B**;
- b) Approving the Contract Procedures detailed in this Motion and the Bidding Procedures Order;
- c) Approving the Sale Notice attached hereto as **Exhibit D**;
- d) Authorizing, but not directing, the Debtors to continue the existing sale process for the Purchased Assets and remaining Assets in accordance with the Bidding Procedures;

- e) Approving Contura as the Stalking Horse Purchaser for the Purchased Assets;
- f) Authorizing, but not directing, the Debtors to coordinate the transfer and/or assignment of necessary governmental permits and licenses directly with the governmental authority responsible for the issuance and/or transfer of the same;
- g) Authorizing the Debtors to incur junior debt in possession financing from Contura necessary to finance the sale process; and
- h) Authorizing, but not directing, the Debtors to terminate their existing 401(k) plan.

29. The Debtors further request that, following the completion of any Auction and the Sale Hearing, the Court enter the Sale Order that, among other things, (i) approves the sale of the Purchased Assets to Contura and/or any other successful bidder(s) free and clear of liens, claims, encumbrances and other interests pursuant to sections 363(b) and (f) of the Bankruptcy Code, and (ii) approves the assumption and assignment of any executory contracts and unexpired leases designated by the successful bidder for assumption and assignment pursuant to section 365 of the Bankruptcy Code.

BASIS FOR RELIEF

A. Applicable Standard to a Sale or Use of Estate Assets

30. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate” 11 U.S.C. § 363(b)(1). Section 363(b) of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale, or lease of property of the estate; however, bankruptcy courts within this jurisdiction have required that the authorization of such use, sale, or lease of property of the

estate, not in the ordinary course of business, must be based upon the sound business judgment of the debtor. See *In re W.A. Mallory Co., Inc.*, 214 B.R. 834, 836 (Bankr. E.D. Va. 1997) (adopting the “sound business purpose” test for section 363 purposes and citing *Lionel* as authority therefor); *In re WBQ P’ship*, 189 B.R. 97, 102 (Bankr. E.D. Va. 1995) (same); see also *In re Lionel Corp.*, 722 F.2d 1063, 1070 (2d Cir. 1983) (requiring “some articulated business justification” to approve the use, sale, or lease of property outside the ordinary course of business).

31. A sound business purpose for the sale of a debtor’s assets or equity interests outside the ordinary course of business may be found where such a sale is necessary to preserve the value of assets for the estate, its creditors, or interest holders. See, e.g., *Lionel Corp.*, 722 F.2d at 1070. 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. 650, 656 (S.D.N.Y. 1992) (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.”). Thus, if a debtor's actions satisfy the business judgment rule, then the transaction in question should be authorized under section 363(b)(1) of the Bankruptcy Code.

B. Approval of the Bidding Procedures

32. A debtor's business judgment is entitled to substantial deference with respect to the procedures to be used in selling assets from the estate. *See, e.g., In re Integrated Resources, Inc.*, 147 B.R. 650, 656-57 (Bankr. S.D.N.Y. 1992) (noting that bid procedures negotiated by a debtor are to be reviewed according to the deferential “business judgment” standard; *In re 995 Fifth Ave. Assocs., L.P.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (same).

33. Further, in a sale of property of the estate, the debtors' primary goal is to maximize the proceeds received by the estate. *See, e.g., Integrated Resources, 147 B.R. at 659* (“It is a well-established principle of bankruptcy law that the . . . [Debtors'] duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.”) (quoting *In re Atlanta Packaging Products, Inc.*, 99 B.R. 124, 130 (Bankr. N.D. Ga. 1988)). Further, a debtor maximizes value for creditors by selecting the ‘highest and best bid, and thereby protecting the interests of [the] debtor, its creditors, and its equity holders.’” *In re GSC, Inc., et al.*, 453 B.R. 132, 169-170 (Bankr. S.D.N.Y. 2011) (quoting *In re Fin. News Networks, Inc.*, 126 B.R. 152, 157 (S.D.N.Y. 1991).

34. As a result, courts routinely recognize that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate and therefore are appropriate in the context of bankruptcy transactions. *See, e.g., Integrated*

Resources, 147 B.R. at 659 (such procedures “encourage bidding and to maximize the value of the debtor’s assets”).

35. The Debtors believe that the proposed Bidding Procedures will promote active bidding from the most interested parties and accordingly, will elicit the best and highest offers available for the sale of the Debtors’ assets. The proposed Bidding Procedures will allow the Debtors to conduct the sale transactions in a controlled, transparent and fair fashion that will encourage meaningful input from key constituents and participation by financially capable bidders who will offer the best package for the Assets and who can demonstrate the ability to close a transaction.

36. While the Debtors understand and recognize that the proposed sale process is significantly shorter than the norm in other chapter 11 cases, the Debtors’ core source of its value, their operations and people, truly is the proverbial “melting ice cube.” Without Contura’s offer to purchase the Western Purchased Assets and Pax Purchase Assets and fund the Debtors’ expenses during sale process by pre-funding the purchase price, the Debtors would be out of options, would immediately convert to chapter 7, and substantial value and jobs would be lost. The sale process proposed here, including the Bidding Procedures and proposed timeline truly are the Debtors only and last opportunity to achieve a value-maximizing sale and return as many employees to work as possible.

37. Moreover, similar procedures in complex chapter 11 cases have been previously approved in this Circuit. *See, e.g., In re RoomStore, Inc.*, No. 11–37790 (DOT) (Bankr. E.D. Va. Jan. 3, 2012); *In re Movie Gallery, Inc.*, No. 10–30696 (DOT) (Bankr. E.D. Va. Oct. 27, 2010); *In re LandAmerica Fin. Grp., Inc.*, No. 08–35994 (KRH) (Bankr. E.D. Va. April 16, 2009); *In re*

Circuit City Stores, Inc., No. 08–35653 (KRH) (Bankr. E.D. Va. Mar. 3, 2009); *In re S & K Famous Brands, Inc.*, No. 09–30805 (KRH) (Bankr. E.D. Va. Feb. 9, 2009); *In re Chesapeake Corp.*, No. 08–36642 (DOT) (Bankr. E.D. Va. Jan. 20, 2009). Accordingly, the Bidding Procedures should be approved.

C. The Stalking Horse Purchaser Should be Approved

38. The Debtors also seek authority to designate Contura as the Stalking Horse Purchaser for the Western Purchased Assets and the Pax Purchased Assets and to designate as of yet unknown third-parties as the Stalking Horse Purchaser for other Assets. Contura’s Bid, along with any other interested party who is designated as a Stalking Horse Purchaser, will be subject to higher and better offers pursuant to the Bidding Procedures. The use of a stalking horse in a public auction process for sales pursuant to section 363 of the Bankruptcy Code is a customary practice in chapter 11 cases, because the use of a stalking horse bid is, in many circumstances, the best way to maximize value in an auction process by locking in a purchase price “floor” and helping to garner interest in the assets. Accordingly, the Debtors believe that the use of a stalking horse is appropriate here.⁷

D. The Liens and Claims Granted in Connection with the Purchase Deposit

39. Section 364 of the Bankruptcy Code provides, in pertinent part:

(c) If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt—

(1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;

(2) secured by a lien on property of the estate that is not otherwise subject to a lien; or

(3) secured by a junior lien on property of the estate that is subject to a lien.

(d)(1) The court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if—

(A) the trustee is unable to obtain such credit otherwise; and

(B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

11 U.S.C. § 364(c), (d)(1).

40. Bankruptcy Rule 4001(c) governs the procedures for securing authorization to obtain debtor-in-possession financing and provides, in pertinent part:

The court may commence a final hearing on a motion for authority to obtain credit no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a hearing before such 14-day period expires, but the court may authorize the obtaining of credit only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

Fed. R. Bankr. P. 4001(c)(2).

41. As described above and in the Term Sheet, the Debtors seek authorization to grant junior liens and superpriority claims in connection with the Purchase Deposit to avoid immediate and irreparable harm to their estates and creditors. The realities of the Debtors' current financial condition necessitate their granting junior liens and superpriority claims under sections 364(c) of the Bankruptcy Code to operate the sale process and preserve and maximize the value of their assets. Indeed, where few lenders likely can or will extend the necessary credit to a debtor, "it would be unrealistic and unnecessary to require [the debtor] to conduct . . . an exhaustive search

for financing.” *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff’d sub nom.*, *Anchor Sav. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 113 (N.D. Ga. 1989); *see also*, *In re Garland Corp.*, 6 B.R. 456, 461 (B.A.P. 1st Cir. 1980) (secured credit under section 364(c)(2) authorized, after notice and a hearing, upon showing that unsecured credit unobtainable).

42. The Debtors negotiated the Term Sheet with Contura pursuant to their sound business judgment, which is to be accorded deference so long as it does not run afoul of the provisions of and policies underlying the Bankruptcy Code. *See, e.g., Bray v. Shenandoah Fed. Sav. & Loan Ass’n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986) (approving debtor-in-possession financing necessary to sustain seasonal business); *In re Ames Dept. Stores, Inc.*, 115 B.R. 34, 40 (S.D.N.Y. 1990) (“The cases consistently reflect that the court’s discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest”); *In re Farmland Indus., Inc.*, 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003) (noting that approval of post-petition financing requires, *inter alia*, an exercise of “sound and reasonable business judgment”).

43. Bankruptcy courts generally will defer to a debtor-in-possession’s business judgment regarding the need for and the proposed use of funds, unless such decision is arbitrary and capricious. *See In re Curlew Valley Assocs.*, 14 B.R. 506, 511-13 (Bankr. D. Utah 1981); *see also In re Trans World Airlines, Inc.*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving interim loan, receivables facility and asset-based facility based upon debtor’s prudent business judgment). Thus, bankruptcy courts will generally not second-guess a debtor-in-possession’s

business decisions involving “a business judgment made in good faith, upon a reasonable basis, and within the scope of his authority under the Code.” *Curlew Valley*, 14 B.R. at 513-14.

44. The Debtors have exercised sound business judgment in determining the appropriateness of entering into the Term Sheet and have satisfied the legal prerequisites to grant junior liens and superpriority claims on the terms and conditions set forth in the Term Sheet. The Purchase Deposit, as described in the Term Sheet, contains terms and conditions that are the best available under the exigent circumstances of these cases and will provide the Debtors with sufficient liquidity during the period necessary to implement the sale process. *See Unsecured Creditors’ Comm. Mobil Oil Corp. v. First Nat’l Bank & Trust Co. (In re Ellingsen MacLean Oil Co.)*, 65 B.R. 358, 365 (W.D. Mich. 1986) (recognizing that a debtor may have to enter into hard bargains to acquire funds).

45. The funds and liquidity to be provided through the Purchase Deposit are vital to the Debtors’ ability to operate during the sale process, a process that is in the best interests of the Debtors’ estates, their creditors and stakeholders. Failure to approve the liens and claims granted in respect of the Purchase Deposit pursuant to the Term Sheet would cause the Debtors to be unable to pay their operating expenses in the ordinary course of business during the sale process.

E. Termination of the Debtors’ 401(k) Plan

46. Debtor Blackjewel, L.L.C previously established and maintained the Blackjewel LLC 401(k) Plan (the “401(k) Plan”), which is a qualified plan that is subject to sections 401(a) and 401(k) of the Internal Revenue Code (the “IRC”) and the Employee Retirement Income Security Act of 1974 (as amended, “ERISA”). The 401(k) Plan is sponsored and administered by Blackjewel, L.L.C. (in such capacity, the “Plan Sponsor”). Eligible employees (collectively,

the “Plan Participants”) can elect to make pre-tax salary deferral contributions and Roth contributions to the 401(k) Plan through payroll deductions that are then paid to a trust shortly thereafter. The 401(k) Plan also provides employer matching contributions. The Plan Sponsor collects contributions from the Plan Participants from each payroll and transfers those contributions into the 401(k) Plan’s trust.

47. As contemplated by the Sale Motion, the 401(k) Plan is not being conveyed to, or assumed by, Contura. In light of that, and in order to facilitate distributions to Plan Participants the Plan Sponsor has determined that it is in the best interests of the Plan Participants to take the necessary steps to terminate the 401(k) Plan immediately, subject to this Court’s approval. Accordingly, the Board of Directors of the Plan Sponsor have adopted resolutions to terminate the 401(k) Plan effective upon the date the Court enters an order approving this Motion.

48. Pursuant to the terms of the 401(k) Plan, the Plan Sponsor may terminate the 401(k) Plan at any time. The Plan Sponsor’s contractual right to terminate the 401(k) Plan constitutes property of the estate within the meaning of section 541 of the Bankruptcy Code, and the Plan Sponsor’s use of that right may arguably constitute a use of property of its bankruptcy estate outside of the ordinary course of business. Thus, the Plan Sponsor seeks this Court’s authorization, out of an abundance of caution, to exercise its contractual right to terminate the 401(k) Plan.

49. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that a debtor in possession, “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate” 11 U.S.C. § 363(b)(1). Section 363 of the Bankruptcy Code does not set forth a standard for determining when it is appropriate for a court

to authorize the use of a debtor's assets outside of the ordinary course of business. However, courts have required that the decision to sell or use assets outside the ordinary course of business be based upon the sound business judgment of the debtor. See *In re Augusta Tissue Mill, LLC*, Case No. 07-10531, 2007 Bankr. LEXIS 3038, *9 (Bankr. M.D. N.C. Sept. 5, 2007) (approving the debtor's sale of assets under section 363(b) where the sale "reflects the exercise of the Debtor's sound business judgment"); *WBQ P'ship v. Virginia Dep't of Med. Assistance Servs. (In re WBQ P'ship)*, 189 B.R. 97, 102 (Bankr. E.D. Va. 1995) (adopting the "sound business purpose" test for purposes of a sale under section 363).

50. A debtor's showing of a sound business purpose need not be unduly exhaustive. Rather, a debtor is "simply required to justify the proposed disposition with sound business reasons." *In re Baldwin United Corp.*, 43 B.R. 888, 906 (Bankr. S.D. Ohio 1984).

51. Additionally, section 105(a) of the Bankruptcy Code provides a bankruptcy court with broad powers in the administration of a case under the Bankruptcy Code. Section 105(a) of the Bankruptcy Code 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). Section 105 of the Bankruptcy Code essentially codifies the bankruptcy court's inherent equitable powers.

52. Debtor Blackjewel, L.L.C., as Plan Sponsor, submits that sound business reasons exist to terminate the 401(k) Plan. First, the Debtors are in the process of selling all of their assets and won't remain in business. As such, the 401(k) Plan will not be conveyed to, or assumed by, Contura or any other potential purchaser of the Debtors' assets. Second, the Debtors will soon no longer have any employees to administer the 401(k) Plan. Moreover, if the

401(k) Plan is not terminated, the Plan Sponsor's estate will incur additional, unwarranted costs in connection with the ongoing administration of the 401(k) Plan. The termination of the 401(k) Plan will eliminate the Plan Sponsor's obligation to perform under the 401(k) Plan (subject to the actions that the Plan Sponsor must take to distribute the 401(k) Plan assets and wind up the 401(k) Plan) and associated costs of administration thereunder.

53. Accordingly, the Plan Sponsor has determined, in its sound business judgment, that it is in the best interests of the Plan Sponsor, the Plan Participants and the Plan Sponsor's estate and creditors to terminate the 401(k) Plan.

54. Based upon the foregoing, the Plan Sponsor submits that termination of the 401(k) Plan is supported by sound business judgment, and are necessary, prudent, and in the best interests of the Debtor and its estate and creditors.

F. Sales Free and Clear of Liens, Claims, and Other Interests

55. Under section 363(f) of the Bankruptcy Code, the Court may authorize the sale of assets free and clear of existing liens, claims and encumbrances, if any, if:

- (a) applicable non-bankruptcy law permits the sale of such property free and clear of such interest;
- (b) the entity holding the lien, claim or encumbrance consents to the proposed sale;
- (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 also In re Old CarCo LLC*, 2010 U.S. Dist. LEXIS 143101, at *6 (S.D.N.Y. July 2, 2010).

56. The Debtors submit that one or more of the circumstances permitting sales free and clear will be met by or before the Sale Hearing is held. In addition, absent any objection to this motion, certain holders of claims may be deemed to have consented to the sale of the Purchased Assets. Finally, any claims that are interests in property being sold will attach to the net proceeds of the sale transaction, subject to any claims and defenses the Debtors may possess with respect thereto. The Debtors shall hold such proceeds in escrow pending the final resolution of any conflicting claims thereto. Accordingly, the Debtors believe that (a) the sale transaction will satisfy the statutory prerequisites of section 363(f) of the Bankruptcy Code and (b) the sale of the Purchased Assets and any remaining Assets should be approved free and clear of claims.

57. Moreover, courts in the Fourth Circuit have held that section 363(f)(5) of the Bankruptcy Code permits a debtor to sell its assets in a 363 bankruptcy asset sale free and clear of liens as long as the third-parties' interests transfer to the sale proceeds according to the same priority they had in the assets. *See In re Lady H Coal Co.*, 199 B.R. 595, 605, 1996 Bankr. LEXIS 1010, *23 n.6 (Bankr. S.D. W. Va. Mar. 29, 1996) ("It is clear in the Bankruptcy Code that a secured creditor receives payment from proceeds before payment to an unsecured creditor and it is also clear that a bankruptcy sale is free and clear of a secured creditor's claim."); *In re Ricco, Inc.*, 2014 Bankr. LEXIS 1265, *8 (Bankr. N.D. W. Va. Apr. 1, 2014) ("This court agrees that § 363(f)(5) authorizes a sale free and clear of liens and interests when the lien or interest holder could be compelled to accept less than the value of the claim secured by the claim or interest.).

58. The Bankruptcy Court for the Southern District of West Virginia has also specifically held that, under the bankruptcy court's inherent equitable power, the court can

authorize the debtor to sell its property free and clear under section 363(f)(5) of the Bankruptcy Code. *See Lady H Coal Co.*, 199 B.R. at *23-26 (“The well established rule that sales within a bankruptcy proceeding occur free and clear of any interest is founded upon the principle that good faith purchasers receive clean title to the property and that any claims against the property attach to the proceeds. . . . This channeling effect of claims to the proceeds protects good faith purchasers and thus encourages full value offers to bankruptcy estates. The channeling of claims to proceeds also precludes creditors from receiving preferential treatment and ensures that all creditors are treated according to the priorities of distribution as established by Congress in the Bankruptcy Code.

59. As stated by the Second Circuit: ‘In *Van Huffel v. Harkelrode*, 284 U.S. 225, 76 L. Ed. 256, 52 S. Ct. 115 (1931), the Supreme Court explained that even absent express statutory authority, the Bankruptcy Court had the inherent equitable power to sell a debtor's property and to transfer third-party interests to the proceeds of the sale. 284 U.S. at 227-228. *See also Ray v. Norseworthy*, 90 U.S. (23 Wall.) 128, 134-135, 23 L. Ed. 116 (1874) (court may sell bankrupt's property encumbered by third party claims as long as third parties retain their respective priorities in the proceeds of the sale); *Fierman v. Seward National Bank*, 37 F.2d 11, 13 (2d Cir. 1930) (“When the bankrupt's property was sold free of liens, the liens upon the property became rights against the substituted proceeds of sale, and claimants to this fund were obliged to assert their rights by applying to the court in whose custody it was.”); *In re Penn Central Transportation Co.*, 383 F. Supp. 1128, 1130 (E.D. Pa. 1974) (power of a reorganization court to transfer interests in debtor's property to the proceeds of a sale is well established) *In re Johns-Manville Corporation*, 837 F.2d 89, 93 (2d Cir. 1988), *cert. denied*, 488 U.S. 868 (1988).’

Extensive case law exists that claims are directed to the proceeds of a free and clear sale of property and may not subsequently be asserted against a successor. *In re Johns-Manville Corporation*, 837 F.2d 89 (2d Cir. 1988), *cert. denied*, 488 U.S. 868 (1988) (channeling of claims to proceeds consistent with intent of sale free and clear under § 363(f)”).

60. Importantly, the Debtors, Contura and their respective advisors have been in constant dialogue and engaged in extensive negotiations with the Debtors’ secured creditors regarding the potential sale and the sale process, and have encouraged them to put forth a viable bid for the Assets. While such creditors have not put forth a bid for the Assets, the Bidding Procedures expressly reserve their right to credit bid for the purchase of the Assets to the extent of their liens.

G. The Proposed Sale Meets the Business Judgment Standard and Should be Approved

61. The Debtors have determined, in an exercise of their business judgment, that the proposed sale of the Purchased Assets to the successful bidder(s) following the conclusion of the sale process will maximize value and benefit their estates and creditors. As a result of the postpetition efforts of the Debtors and the Debtors’ professionals, the Debtors believe that the process is the only option to achieve the best possible sale for the Purchased Assets and any other Assets under the circumstances. The sale process is designed to, under the circumstances, maximize value and market the Assets in a full, fair and transparent manner. For these reasons, the Debtors respectfully submit that the proposed sale is in the best interest of the Debtors’ estates and creditors, will maximize value, is the best opportunity to return employees to work, and should be approved.

H. Assumption and Assignment of the Designated Contracts and Approval of Proposed Cure Amounts

62. The Debtors also seek authority to assume and assign the executory contracts and unexpired leases to the successful bidder(s). The Debtors have the power to assume executory contracts or unexpired leases subject to the Court's approval so long as the statutory requirements for assumption under section 365 of the Bankruptcy code are met. 11 U.S.C. § 365(a). Section 365(b)(1) of the Bankruptcy Code codifies the statutory assumption requirements, and provides in relevant part as follows:

(b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default . . . ;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

63. The standard that is applied in determining whether an executory contract or unexpired lease should be assumed is the debtor's "business judgment" that the assumption is in its economic best interests. *See, e.g., Group of Institutional Investors v. Chicago, Milwaukee, St. Paul & Pacific Ry. Co.*, 318 U.S. 523 (1943) (applying Bankr. Act section 77(b), predecessor to Bankruptcy Code section 365, and rejecting test of whether executory contract was burdensome in favor of whether rejection is within debtor's business judgment); *Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 40 (3d Cir. 1989) (describing deference to a debtor's

business judgment as “breathing space afforded [to] the debtor to consider whether to reject or assume executory contracts under the Code.”).

64. To determine if the business judgment test is met, the court “is required to examine whether a reasonable business person would make a similar decision under similar circumstances.” *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006). Specifically, a court should find that the assumption or rejection is elected on “an informed basis, in good faith, and with the honest belief that the assumption . . . [is] in the best interests of [the debtor] and the estate.” *In re Network Access Solutions Corp.*, 330 B.R. 67, 75 (Bankr. Del. 2005). Under this standard, a court should approve a debtor’s business decision unless that decision is the product of bad faith or a gross abuse of discretion. *See, Computer Sales Int’l, Inc. v. Federal Mogul (In re Federal Mogul Global, Inc.)*, 293 B.R. 124, 126 (D. Del. 2003); *Lubrizol Enters. v. Richmond Metal Finishers*, 756 F.2d 1043, 1047 (4th Cir. 1985).

65. The meaning of “adequate assurance of future performance” depends on the facts and circumstances of each case, but should be given a “practical, pragmatic construction.” *EBG Midtown S. Corp. v. McLaren/Hart Env. Eng’g Corp. (In re Sanshoe Worldwide Corp.)*, 139 B.R. 585, 592 (S.D.N.Y. 1992); *In re Rachels Indus., Inc.*, 109 B.R. 797, 803 (Bankr. W.D. Tenn. 1990); *see also, In re Prime Motor Inns Inc.*, 166 B.R. 993, 997 (Bankr. S.D. Fla. 1994); *Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1988) (“[a]though no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance.”).

66. Adequate assurance of future performance may be provided by demonstrating, among other things, the assignee’s financial health and experience in managing the type of

enterprise or property assigned. *See, e.g., In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (stating that adequate assurance of future performance is present when the prospective assignee of lease from the debtor has financial resources and has expressed willingness to devote sufficient funding to the business in order to give it a strong likelihood of succeeding).

67. In addition, section 365(f)(1) of the Bankruptcy Code, by operation of law, invalidates provisions that prohibit, restrict, or condition assignment of or impose an economic impairment to an executory contract or unexpired lease. *See, e.g., Coleman Oil Co., Inc. v. Circle K Corp. (In re Circle K Corp.)*, 127 F. 3d 904, 910-11 (9th Cir. 1997) (“no principle of bankruptcy or contract law precludes us from permitting the Debtors here to extend their leases in a manner contrary to the leases’ terms, when to do so will effectuate the purposes of section 365.”), *cert. denied*, 522 U.S. 1148 (1998). Section 365(f)(3) goes beyond the scope of section 365(f)(1) by prohibiting enforcement of any clause creating a right to modify or terminate the contract or lease upon a proposed assumption or assignment thereof. *See, e.g., In re Jamesway Corp.*, 201 B.R. 73 (Bankr. S.D.N.Y. 1996) (finding that section 365(f)(3) prohibits enforcement of any lease clause creating a right to a terminate lease because it is being assumed or assigned, thereby indirectly barring assignment by debtor; all lease provisions, not merely those entitled anti-assignment clauses, are subject to court’s scrutiny regarding anti-assignment effect).

68. Here, the assumption and assignment of contracts and leases to the successful bidder(s) meets the business judgment standard and satisfies all requirements for assumption and assignment under section 365 of the Bankruptcy Code. The contracts and leases to be assigned relate specifically to the Assets being sold. The Stalking Horse Purchaser will identify the

contracts and leases potentially needed to operate the Western Purchased Assets and the Pax Purchased Assets going forward. Purchasers of any other Assets will similarly designate contracts and leases necessary to operate those assets. Notice of the schedules of the contracts and leases to be assumed and assigned, and the cure amount thereof, will be provided to all applicable counterparties, and a process will be established pursuant to which such parties may object to such assumption and assignment or cure amounts, and the Court may resolve any such disputes that may arise. As such, the assumption and assignment of contracts and leases is essential to facilitating the proposed sale(s).

69. The Debtors expect to receive evidence of the successful bidder(s)'s ability to close the proposed sale and to otherwise perform its obligations under any contracts and leases to be assigned and will share such confidential information with any counterparty to a contract or lease that to be assigned that requests the information in writing. Accordingly, the Debtors submit that assumption and assignment of executory contracts and leases to the successful bidder(s) is appropriate under the circumstances.

WAIVER OF BANKRUPTCY RULE 6004(A) AND 6004(H)

70. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

NOTICE

71. The Debtors, with the assistance of their proposed claims and noticing agent, will provide notice of this motion by email and/or fax to: (i) the Office of the United States Trustee

for the Southern District of West Virginia; (ii) the Debtors' prepetition secured lenders; (iii) the creditors appearing on the Debtors' consolidated list of top 30 unsecured creditors; (iv) the Office of the United States Attorney for the District of West Virginia; (v) the Internal Revenue Service; (vi) any local, state, or federal agencies that regulate the Debtors' businesses, (vii) counsel to Riverstone Credit Partners – Direct, L.P., Bailey & Glasser LLP, (viii) counsel to United Bank, Inc., Steptoe & Johnson PLLC, (ix) counsel to Highbridge Capital Management, LLC and Whitebox Advisors LLC, Paul, Weiss, Rifkind, Wharton & Garrison LLP, (x) counsel to Contura Energy, Inc., David Polk & Wardwell LLP, (xi) proposed counsel to Creditors' Committee, Whiteford Taylor & Preston, LLP; and (xii) all parties requesting notices pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

[Remainder of Page Intentionally Left Blank]

WHEREFORE, the Debtors respectfully request the Court (a) to enter the Bidding Procedures Order, substantially in the form attached as **Exhibit A**, (b) after the conclusion of the Auction (if any) and the Sale Hearing, enter the Sale Order, and (c) grant such other relief the Court deems just and proper.

DATED: July 25, 2019

SUPPLE LAW OFFICE, PLLC

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

EXHIBIT A

Bid Procedures Order

[To be Filed]

EXHIBIT B

Term Sheet

363 PROCESS TERM SHEET

JULY 25, 2019

This term sheet (the “*Term Sheet*”) sets forth the principal terms of a proposed transaction pursuant to which (i) Blackjewel, L.L.C. and Blackjewel Holdings L.L.C. (collectively, “*Sellers*”) and certain of their subsidiaries and affiliates that are debtors under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of West Virginia (the “*Bankruptcy Court*”) under the caption *In re Blackjewel, L.L.C., et al.* (Case No. 19-30289) (collectively, the “*Debtors*” or the “*Seller Parties*”, as applicable) will conduct a sales process for their assets, (ii) Contura Energy, Inc. (“*Contura*” or “*Stalking Horse Purchaser*”) will serve as stalking horse purchaser for certain assets, as set forth in more detail below, and (iii) the Western Asset Sale and the Pax Asset Sale (each as defined below) will be approved subject to the terms set forth herein (collectively, the “*Transactions*”).

This Term Sheet is an expression of interest only, will not constitute an admission by any person or entity or an agreement to negotiate, and is not intended to and does not create any legal or equitable obligations on any party. The proposals contained herein are subject to further diligence and tax analysis and the completion of definitive documentation acceptable to the parties, as well as required internal approvals for each party. Each party reserves the right at any time prior to the execution of definitive agreements to cease negotiations and decline to enter into such definitive agreements should such party determine not to proceed with any proposed transaction. The parties agree that no liability will arise in the event of any such determination.

<p>363 Sales Process</p>	<p>The Debtors will conduct a sales process for their assets in accordance with the Bidding Procedures attached as <u>Exhibit A</u> hereto (the “<i>Bidding Procedures</i>”).</p> <p>Contura will serve as the stalking horse purchaser for the Western Purchased Assets (as defined below) and the Pax Purchased Assets (as defined below).</p> <p>In the event that a Qualified Bidder (as defined in the Bidding Procedures) other than Contura is not identified with respect to the Western Purchased Assets and the Pax Purchased Assets, collectively (the “<i>Western/Pax Assets</i>”), the Western Asset Sale and the Pax Asset Sale, collectively (the “<i>Western/Pax Asset Sale</i>”), will automatically be deemed to be the Successful Bid (as defined in the Bidding Procedures) therefor and, subject to entry of an order by the Bankruptcy Court approving the Western/Pax Asset Sale, deemed automatically approved on the terms set forth herein.</p>
<p>Stalking Horse Purchaser Entities</p>	<p>One or more subsidiaries of Contura will serve as the stalking horse purchaser of the Western Purchased Assets and the stalking horse purchaser of the Pax Purchased Assets.</p>
<p>Consideration for Western Asset Sale and Pax Asset Sale</p>	<p>As consideration for the Western/Pax Assets, Contura will (i) pay \$12.5 million in cash (in addition to the Purchase Deposit), (ii) assume the Western Assumed Obligations and (iii) assume the Pax Assumed Obligations.</p>

	<p>The consideration will be allocated among the Western/Pax Assets in a manner to be determined.</p>
<p>Financing/Purchase Price Deposit</p>	<p>In connection with its agreement to serve as Stalking Horse Purchaser, Contura has agreed, subject to entry of the Bidding Procedures Order, to provide a cash deposit equal to \$8.1 million to the Seller Parties (the “<i>Purchase Deposit</i>”), to be applied to the purchase price if the Western/Pax Asset Sale.</p> <p>The Purchase Deposit (and any resulting Superpriority Purchase Price Claim (as defined below)) shall bear interest at a rate of LIBOR + 12.50% (LIBOR floor of 2.00%), which shall be paid in cash on a monthly basis in arrears. To the extent such Purchase Deposit (or resulting Superpriority Purchase Price Claim) or any interest on the Purchase Deposit (or resulting Superpriority Purchase Price Claim) is not paid when due, such amounts shall also bear interest at a rate of 2.00%.</p> <p>The Purchase Deposit and the proceeds thereof shall be available for use by the Seller Parties, subject to the following conditions:</p> <ul style="list-style-type: none"> (a) The Seller Parties must comply with the Budget attached hereto (the “<i>Budget</i>”); (b) The Purchase Deposit and all proceeds thereof shall be held in Escrow, subject to release from Escrow for use by the Debtors solely in accordance with the Budget, including, without limitation, deposits into an escrow account maintained for the exclusive benefit of the professionals retained by the Debtors and the Committee of the funds necessary to pay allowed fees and expenses of those professional (the “<i>Professional Escrow</i>”). For the avoidance of doubt, the Professional Escrow shall not be subject to any lien or security interest and is and shall be maintained for the exclusive benefit of estate professionals even in the event of a future conversion to chapter 7 or dismissal of these cases; and (c) Any other Bid for the Western/Pax Assets that is a Qualified Bid must include, as a part of such bid, reimbursement to Contura of the Purchase Deposit (in cash in full), unless waived by Contura.
<p>Purchase Deposit Liens/Claims</p>	<p>To the extent that the Debtors use the Purchase Deposit and solely in the event that the Court does not approve a sale of the Western/Pax Assets either to Contura or to another Bidder that reimburses Contura for the Purchase Deposit, Contura shall receive a dollar-for-dollar superpriority claim (the “<i>Superpriority Purchase Deposit Claims</i>”) against all Debtors, which claims shall be junior to any allowed superpriority administrative claims granted in connection with the Riverstone DIP Facility and pari passu to the administrative claims</p>

	<p>granted in connection with the Highbridge/Whitebox DIP Facility but shall be senior to all other administrative expenses, and which claim shall be granted:</p> <p>(a) Liens on all present and after-acquired property (whether tangible, intangible, real, personal or mixed and wherever located) of the Debtors that were not subject to validly perfected liens as of the Petition Date, including without limitation proceeds of avoidance actions, which liens shall be junior to (1) any liens (the “<i>Riverstone DIP Liens</i>”) securing the existing interim DIP financing provided by Riverstone Credit Partners – Direct, L.P. (the “<i>Riverstone DIP Facility</i>”) and (2) any liens (the “<i>HB/WB DIP Liens</i>”) securing the Highbridge/Whitebox DIP Facility; and</p> <p>(b) Liens on all present and after-acquired encumbered property (whether tangible, intangible, real, personal or mixed and wherever located) of the Debtors that is subject to validly perfected liens as of the date of the filing of the Chapter 11 Cases, which liens shall be junior to the (i) Riverstone DIP Liens, (ii) the HB/WB DIP Liens and (iii) any and all valid, perfected, enforceable and unavoidable liens as of the July 1, 2019 (the “<i>Petition Date</i>”) held or asserted by any person or entity, including, without limitation, Riverstone Credit Partners, United Bank, Inc., Campbell County, Wyoming for unpaid ad valorem taxes, Fifth Third Bank, or Caterpillar Financial Services Corporation (collectively, the “<i>Senior Liens.</i>”</p> <p>All of the liens granted herein are, to the fullest extent permitted by applicable law, effective and perfected upon entry of the Bidding Procedures Order and without the necessity of the execution of mortgages, security agreements, pledge agreements, financing statements or other agreements.</p> <p>Notwithstanding the foregoing, the Company shall take all actions necessary, desirable and/or reasonably requested by Contura to create and perfect all liens in the collateral securing the Purchase Deposit Superpriority Claims, including in any jurisdiction in which the Bidding Procedures Order is not applicable.</p> <p>In addition, with respect to the Purchase Deposit Superpriority Claims, the Bidding Procedures Order shall provide for waivers of section 506(c), section 552(b)’s equities of the case exception, and any right to apply the equitable doctrine of marshaling (other than as provided in the Bidding Procedures Order), among other customary terms and provisions.</p>
<p>Conditions Precedent to Purchase Deposit</p>	<ul style="list-style-type: none"> • Entry of the Bidding Procedures Order by the Bankruptcy Court which shall be in form and substance acceptable to Contura, and which shall approve and bind the Debtors to comply with this Term Sheet and the Bidding Procedures; and

	<ul style="list-style-type: none"> • The Debtors shall file voluntary petitions in the Chapter 11 Cases on behalf of any presently non-debtor entities that own or control any assets (including permits, licenses or leases) necessary or desirable to operate either the Western Purchased Assets or the Pax Purchased Assets; • Delivery of an updated budget in form and substance acceptable to Contura (the “Budget”).
<p>Return of Purchase Price Deposit/Payment of Superpriority Purchase Price Deposit Claim</p>	<p>Any unused Purchase Price Deposit shall be remitted to Contura and any Superpriority Purchase Deposit Claim (including accrued interest on the Purchase Price Deposit or Superpriority Purchase Deposit Claim) shall be due and owing to Contura, upon the earlier of:</p> <ul style="list-style-type: none"> • A breach of any term of this Term Sheet by the Debtors; • Use of the Purchase Price Deposit in a manner inconsistent with the Budget; • The approval by the Bankruptcy Court of a Successful Bid for any of the Western Assets or the Pax Assets (unless Contura shall have waived the requirement for such Successful Bid to have reimbursed the Purchase Price Deposit); or • August 5, 2019, unless the Sale Order for each of the Western Assets and the Pax Assets shall have been approved, which shall approve the Western Asset Sale and the Pax Asset Sale to Contura.
<p>Western Asset Sale</p>	<p>Contura will purchase substantially all of the assets of the Seller Parties primarily related to the open-pit surface mines and related facilities commonly known as the Belle Ayr mine and the Eagle Butte mine (the “Western Mines”), which shall include, for the avoidance of doubt, all equipment related to the Western Mines and all books and records to the extent related to the Western Mines, other than the Western Excluded Assets (the “Western Purchased Assets”), free and clear of all liens, claims, interests and encumbrances, and will assume no liabilities except the Western Assumed Liabilities (such sale, the “Western Asset Sale”).</p> <p>The Western Asset Sale will exclude assets of the Seller Parties that have been expressly designated by Contura (the “Western Excluded Assets”). Contura will have the right to designate any additional assets as Western Excluded Assets at any time prior to the Bid Deadline (as defined in the Bidding Procedures).</p> <p>The “Western Assumed Liabilities” will consist of (i) all obligations under applicable law, or applicable permits, to prevent, mitigate or otherwise address the effects of mining activities (including the exploration, permitting, extraction, processing, storage and transportation of coal, non-coal minerals, natural gas and coalbed methane gas), including the reclamation or restoration of lands used for such activities (collectively “Reclamation Obligations”), in each case related to the Western Purchased Assets (“Western Reclamation”).</p>

	<p><i>Obligations</i>”); (ii) payroll-related payments to be agreed by the parties; (iii) assumed contracts as may be expressly designated by Contura after Closing (subject to agreement on cure arrangements with contractual counterparties); (iv) trade payables as may be expressly designated by Contura after Closing (subject to agreement on cure arrangements with trade counterparties) and (v) liabilities and encumbrances expressly designated by Contura prior to the Bid Deadline.</p> <p>The “<i>Western Excluded Liabilities</i>” will consist of the accrued and unpaid royalty payments and production taxes related to the Western Mines and all other liabilities other than the Western Assumed Liabilities. Contura will not assume any of the Western Excluded Liabilities. In addition, Contura will have the right to designate any additional liabilities (other than the Western Reclamation Obligations) as Western Excluded Liabilities at any time prior to the Bid Deadline.</p> <p>If, after the closing, any counterparty to a contract included in the Western Assumed Liabilities or the Western Purchased Assets asserts that assignment of such contract to Contura is subject to a cure amount, Contura will have the right to designate such contract as a Western Excluded Liability or Western Excluded Asset, as applicable.</p> <p>The Western Asset Sale will be effected pursuant to this Term Sheet and any additional definitive documentation between Contura and the Sellers, as may be required by Contura.</p>
Western Mines Operations	Upon the closing of the Western Asset Sale, Contura will (i) hire the majority of the displaced Wyoming employees of the Seller Parties and (ii) resume normal mining operations after closing.
Javelin Arrangements	TBD
Ordinary Course Covenant	The Debtors shall not engage in any transaction, make any payment or transfer or take any other action (or forbear from taking any action), in each case outside the ordinary course of business; provided however, that the Debtors may do any of the foregoing to the extent approved by order of the Bankruptcy Court and, to the extent applicable, in accordance with the Budget.
Transfer of the Western Leases	The Seller Parties and Contura will cooperate to diligently pursue the transfer to it of all lease agreements (“ <i>Leases</i> ”) held by the Seller Parties, related to the operation of the Western Mines.
Pax Asset Sale	Contura will purchase substantially all of the assets of the Seller Parties related to the open-pit surface mine and related facilities commonly known as the Pax Surface Mine, which shall include, for the avoidance of doubt, all equipment related to the Pax Surface Mine and all books and records to the extent related to the Pax Mines, (the “ <i>Pax Purchased Assets</i> ”), other than the Pax Excluded Assets, free and clear of all liens, claims, interests and encumbrances and will assume no liabilities

	<p>except for the Pax Assumed Liabilities (such sale, the “<i>Pax Asset Sale</i>”).</p> <p>The “<i>Pax Assumed Liabilities</i>” will consist of (i) all Reclamation Obligations related to the Pax Purchased Assets (“<i>Pax Reclamation Obligations</i>”); (ii) payroll-related payments to be agreed by the parties; (iii) assumed contracts expressly as may be expressly designated by Contura after Closing (subject to agreement on cure arrangements with contractual counterparties); (iv) trade payables as may be expressly designated by Contura after Closing (subject to agreement on cure arrangements with trade counterparties) and (v) liabilities and encumbrances expressly designated by Contura prior to the Bid Deadline.</p> <p>The Pax Asset Sale will expressly exclude assets of the Seller Parties that have been expressly designated by Contura (the “<i>Pax Excluded Assets</i>”). Contura will have the right to designate any additional assets as Pax Excluded Assets at any time prior to the Bid Deadline.</p> <p>The Pax Asset Sale A will expressly exclude all of Sellers’ liabilities other than the Pax Assumed Liabilities (the “<i>Pax Excluded Liabilities</i>”), including any accrued and unpaid royalty payments and production taxes related to the Pax Surface Mine. Contura will have the right to designate any additional liabilities (other than Pax Reclamation Obligations) as Pax Excluded Liabilities at any time prior to the Bid Deadline.</p> <p>If, after the closing, any counterparty to a contract included in the Pax Assumed Liabilities or the Pax Purchased Assets asserts that assignment of such contract to Contura is subject to a cure amount, Contura will have the right to designate such contract as a Pax Excluded Liability or Pax Excluded Asset, as applicable.</p> <p>The Pax Asset Sale will be effected pursuant to this Term Sheet and any additional definitive documentation between Contura and the Sellers, as may be required by Contura.</p>
<p>Transfer of the Pax Permits and Leases</p>	<p>The Seller Parties and Contura will cooperate to diligently pursue the transfer to Contura of all permits, licenses consents, authorizations, permit applications and other approvals (“<i>Permits</i>”) and Leases held by the Sellers Parties and related to the operation of the Pax Mine.</p>
<p>Collateral</p>	<p>The Seller Parties and Contura will agree in good faith on the treatment of any collateral posted by the Seller Parties to backstop surety bonds issues with respect to the Western Purchased Assets and the Pax Purchased Assets.</p>
<p>Representations, Warranties and Covenants</p>	<p>The Western Asset Sale and Pax Asset Sale will contain mutually agreeable representations, warranties and covenants consistent with</p>

	<p>customary bankruptcy practice relating to sales conducted pursuant to section 363 of the Bankruptcy Code.</p>
<p>Conditions Precedent to Closing</p>	<p>The Western Asset Sale and the Pax Asset Sale will be subject to customary conditions to the parties' obligations to effect the closing (which may be waived in the sole discretion of Contura), including, but not limited to:</p> <ul style="list-style-type: none"> (a) all specified governmental and regulatory approvals will have been obtained or, if applicable, will have expired, will have been waived by the applicable governmental authority or will have been terminated; (b) there will not be in effect any order by a governmental body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated by this Term Sheet; (c) the Bankruptcy Court shall have approved the assumption and assignment of any unexpired leases or executory contracts constituting Western Purchased Assets or Pax Purchased Assets, as applicable; (d) the Governmental Parties shall have consented to (i) the transfer of the Leases (as defined in the Bidding Procedures) related to the Western Mines and the Pax Mines, and (ii) a mutually agreed settlement regarding any accrued and unpaid royalty payments and production taxes related to the Western Mines or the Pax Surface Mines; (e) the parties will have executed and delivered all Definitive Documents; and (f) the Bankruptcy Court will have entered an order approving the Western Asset Sale or Pax Asset Sale, as applicable (the "<i>Sale Order</i>") and such Sale Order will not be subject to any stay.
<p>Contura Consent Over Definitive Documents</p>	<p>The definitive documents and agreements governing the Transactions (the "<i>Definitive Documents</i>") will be subject to consent of Contura. The Definitive Documents will include:</p> <ul style="list-style-type: none"> • the Sale Motion, Bidding Procedures Order and Sale Order; • any motion or proposed court order seeking to authorize the Seller Parties' use of cash collateral or to obtain post-petition financing; • prior to the closing of the Transactions, any plan, disclosure statement or other solicitation materials with respect to a plan; and

	<ul style="list-style-type: none"> any definitive documentation related to the Western Asset Sale or the Pax Asset Sale, including with respect to any settlement regarding any unpaid royalty payments and production taxes. <p>The Seller Parties will provide draft copies of any Definitive Document that they intend to file in the Bankruptcy Cases to Contura’s counsel before the Seller Parties file any Definitive Document.</p>
Cooperation	<p>Each party agrees to cooperate fully with the other parties to (a) refrain from taking any actions that would reasonably be expected to impair, delay or impede the closing of the Transaction, and (b) use reasonable best efforts to cause all closing conditions of the other party to be met as promptly as practicable.</p>
Releases	<p>The Sale Order will provide for customary releases by the Seller Parties of any claims or causes of action against Contura, and the representatives, professionals and other advisors thereof, including but not limited to release of any and all claims, obligations, suits, judgments, damages, rights, causes of action and liabilities of any nature whatsoever (including, without limitation, those arising under the Bankruptcy Code), whether known or unknown, foreseen or unforeseen, matured or unmatured, existing or thereafter arising, in law, equity, or otherwise against the Purchased Assets and Contura and their respective affiliates. In addition, if Sellers file a chapter 11 plan, such plan will include releases and exculpation provisions in favor of Contura and the representatives, professionals and other advisors thereof to the maximum extent permitted by law.</p> <p>For the avoidance of doubt, Contura and the Highbridge/Whitebox DIP Lenders shall not waive, and shall expressly reserve, all claims against the Seller Parties and the Debtors’ estates, whether arising under contract, by law, in equity or otherwise.</p>
Governing Law	<p>The Western Asset Sale and Pax Asset Sale, as applicable, will be governed by, and must be construed in accordance with, the laws of the state of New York, without giving effect to its conflicts of laws principles.</p>
Jurisdiction	<p>New York County, New York or Bankruptcy Court (or any court exercising appellate jurisdiction over the Bankruptcy Court).</p>
Termination	<p>This Term Sheet will terminate on August 5, 2019, unless (i) the Sale Order for each of the Western Assets and the Pax Assets shall have been approved, which shall approve the Western Asset Sale and the Pax Asset Sale to Contura, or (ii) Contura shall have been designated a Backup Bidder (as defined in the bidding procedures).</p>

EXHIBIT A

Bidding Procedures

Blackjewel Bidding Procedures

<p>Assets</p>	<p>The assets subject to the Bidding Procedures are all or substantially all of the Debtors’ assets, excluding cash, accounts receivable and deposits (collectively, the “<u>Assets</u>”). A party may participate in the bidding process by submitting a Bid for all or any combination of the following categories of Assets (each, a “<u>Lot</u>”):</p> <ul style="list-style-type: none"> (a) All or substantially all of the Assets relating to the following (collectively, the “<u>Western/Pax Assets</u>”): <ul style="list-style-type: none"> (i) the Debtors’ operations in the Powder River Basin in Wyoming, consisting of the open-pit surface mines commonly known as the Belle Ayr mine, the Eagle Butte mine and all related facilities and equipment (collectively, the “<u>Western Assets</u>”); and (ii) the Pax surface mine and all related facilities and equipment (collectively, the “<u>Pax Mine Assets</u>”); (b) One or more, or any combination of, Lots of Assets relating to the Debtors’ operations in the Central Appalachian Basin in Virginia, Kentucky and West Virginia, other than the Pax Mine Assets (collectively, the “<u>Other Eastern Assets</u>”), consisting of: <ul style="list-style-type: none"> (i) Black Mountain assets; (ii) Lone Mountain assets; (iii) Virginia subdivision assets; (iv) BHL subdivision assets; and (c) One or more, or any combination of, the Lots consisting of the remaining assets of the Debtors (the “<u>Miscellaneous Assets</u>”).
<p>Stalking Horse Purchaser</p>	<p>The Debtors have entered into an agreement with Contura Energy, Inc. (“<u>Contura</u>” or the “<u>Stalking Horse Purchaser</u>”), as set forth on the 363 Process Term Sheet, dated as of July 24, 2019 (the “<u>363 Process Term Sheet</u>”), which sets forth the terms and conditions for the sale to Contura of Western/Pax Assets.</p> <p>The 363 Process Term Sheet and the Transactions (as defined therein) contemplated therein have been approved by the Bankruptcy Court.</p>
<p>Key Dates</p>	<p>The key dates for the sale process are as follows:</p> <ul style="list-style-type: none"> (a) Deadline for Qualified Bids (“<u>Bid Deadline</u>”): 5:00 p.m. (prevailing Eastern Time) on July 31, 2019 (b) Auction Date (if more than one Qualified Bid is received for a particular Lot or group of Lots): 9:00 a.m. (prevailing Eastern Time) on August 1, 2019 (c) Sale Hearing: no later than August 2, 2019 (d) Closing Date: no later than August 5, 2019
<p>Consultation Parties</p>	<p>Unless otherwise approved by the Bankruptcy Court, no amendment or other modification to these Bidding Procedures (including extension of any of the deadlines set forth herein) shall be made by the Debtors without the prior written approval of Contura, and after consultation with the Official Committee of</p>

	<p>Unsecured Creditors (the “UCC” and, together with Contura, the “<u>Consultation Parties</u>”).</p>
<p>Preliminary Interested Investors</p>	<p>To participate in the bidding process and to receive due diligence materials, a party must submit the following to the Debtors (such a party, a “<u>Preliminary Interested Investor</u>”):</p> <ul style="list-style-type: none"> (a) An executed confidentiality agreement agreed upon with the Debtors; and (b) Reasonable evidence demonstrating the party’s financial and other ability to consummate a sale transaction and perform the Reclamation Commitments for the Lots for which it intends to submit a Bid, as determined by the Debtors in consultation with the Consultation Parties.
<p>Due Diligence</p>	<p>The Debtors will afford any Preliminary Interested Investor the time and opportunity to conduct due diligence; <u>provided</u> that the Debtors shall not be obligated to furnish any due diligence information after the Bid Deadline to any party that has not submitted a Qualified Bid and may limit the amount of further due diligence available to Qualified Bidders after the Bid Deadline.</p> <p>The Debtors reserve the right to withhold any Diligence Materials that the Debtors determine are business-sensitive or otherwise not appropriate for disclosure to a Preliminary Interested Investor who is a competitor of the Debtors or is affiliated with any competitor of the Debtors. Neither the Debtors nor their representatives shall be obligated to furnish information of any kind whatsoever to any person that is not determined to be a Preliminary Interested Investor.</p> <p>All due diligence requests must be directed to Jefferies LLC, Attn: Robert White and Jerrod Freund.</p>
<p>Qualified Bids</p>	<p>To be eligible to participate in the Auction, each offer, solicitation or proposal (each, a “<u>Bid</u>”; each such eligible Bid, a “<u>Qualified Bid</u>”) and each party submitting a Bid (other than the Stalking Horse Purchaser) (each, a “<u>Bidder</u>”; each such eligible Bidder, a “<u>Qualified Bidder</u>”) must be reasonably determined by the Debtors, in consultation with the UCC, to satisfy each of the following conditions:</p> <ul style="list-style-type: none"> (a) <u>Good Faith Deposit</u>: Each Bid for the Western/Pax Assets must be accompanied by a cash deposit equal to the Purchase Deposit (excluding any Assumed Liabilities) (a “<u>Good Faith Deposit</u>”), which will be used to reimburse the Stalking Horse purchaser for the Purchase Deposit it has provided in the event that a Qualified Bidder is confirmed as the winning bidder as approved by the Bankruptcy Court. The Good Faith Deposit submitted with the Successful Bid will be applied, together with such additional amount as is required, to the purchase price. (b) <u>Same or Better Terms</u>: With respect to Bids for the Western/Pax Assets, each Bid must have terms that are the same or better than the 363 Process Term Sheet (including representations, warranties and termination rights), as determined by the Debtors in consultation with the Consultation Parties. (c) <u>Binding Agreement</u>: Each Bid must include a binding, executed commitment letter (each, a “<u>Commitment Letter</u>”) to close the transactions contemplated in such Bid. Each Commitment Letter must <ul style="list-style-type: none"> (i) confirm the Bidder has reviewed, understands and accepts the Bidding

	<p>Procedures and consents to the core jurisdiction of the Bankruptcy Court and (ii) be irrevocable until five (5) business days after the Sale Hearing; provided that if such Bid is accepted as the Successful Bid or the Backup Bid (each as defined herein) for any one or more of the Lots, such Bid shall continue to remain irrevocable until the closing of the sale of such Lot(s).</p> <p>(d) <u>Scope of Bid</u>: A Bid must be for a specifically identified Lot, or combination of Lots. A Bid must (i) expressly assume all Reclamation Obligations (as defined in the 363 Process Term Sheet) associated with each Lot included in such Bid, (ii) provide for the transfer to and assumption by the Bidder of all material permits, licenses, consents, authorizations, permit applications or other approvals and lease agreements related to each Lot included in such Bid (the “<u>Permit Transfer Requirement</u>”) and (iii) commit the Bidder to obtain replacement surety bonds as required by the applicable governmental authorities to support the Reclamation Obligations or other liabilities, as applicable, which replacement surety bonds (including any collateral posted in respect thereof), in the case of the Western/Pax Assets, must be satisfactory to Contura (collectively items (i), (ii) and (iii), the “<u>Reclamation Commitments</u>”). Contura shall have consent rights over Qualifying Bids solely with respect to determining whether any Bid has sufficiently demonstrated its ability to satisfy the Reclamation Commitments.</p> <p>(e) <u>Minimum Bid</u>: Any Bid for the Western/Pax Assets must have a purchase price, including any assumption of liabilities, that has a value greater than the consideration provided in the 363 Process Term Sheet with respect to such Assets and provide for the payment in cash in full of the Stalking Horse Purchaser’s Purchase Deposit (as defined in the 363 Process Term Sheet) plus interest accrued and owing thereon. In addition, a Bid for any Lot or combination of Lots must at a minimum provide for (i) the performance of the Reclamation Commitments associated with the Lots subject to such Bid and (ii) the payment in cash in full of a pro rata portion of (A) fees owing to the United States Trustee incurred in connection with the Debtors’ chapter 11 cases and any fees payable to the Clerk of Court, (B) professional fees, expenses, and disbursements incurred by professional persons employed by the Debtors or the UCC (including any out-of-pocket expenses of the members of the Creditors’ Committee) (“<u>Professional Fees and Expenses</u>”) incurred on and after the Petition Date, (C) certain other allowed administrative expenses of the Debtors’ estates as identified by the Debtors and (D) certain costs necessary to wind-down the Debtors’ estates as identified by the Debtors (collectively, the “<u>Carve-Out</u>”). For the avoidance of doubt, the portion of the Minimum Bid representing the amount of the Carve-Out is to be held by the Debtors in a segregated escrow account, not subject to the lien or security interest of any party including, without limitation, parties providing secured debtor in possession financing and shall be used solely and exclusively to satisfy the fees, expenses and costs included in the Carve-Out. In the event of a conversion of these chapter 11 cases to cases under chapter 7, the chapter 7 trustee or trustees shall have no right to the</p>
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segregated account for the Carve-Out and the segregated account shall not be part of the chapter 7 estate or estates.

Any Bid for a combination of Lots must (x) allocate the purchase consideration among such Lots, (y) state whether the Bid is conditioned upon the Bidder being the Successful Bidder (as defined below) on more than one Lot and, if so, which are the Lots that the Bid is conditioned upon, and (z) state whether the Bidder is willing to purchase any of the Lots included in the Bid individually, and if so, the Bid must state the price the Bidder would pay for each such Lot.

- (f) Designation of Assigned Contracts and Leases: A Bid must identify the executory contracts and unexpired leases with respect to which the Bidder seeks assignment from the Debtors. If the Bid contemplates the assumption and assignment of any executory contracts or unexpired leases, such Bid must include evidence of the Bidder's ability to comply with section 365 of the Bankruptcy Code (to the extent applicable), including providing adequate assurances of such Bidder's ability to perform in the future the executory contracts and unexpired leases proposed in its Bid to be assumed by the Debtors and assigned to the Bidder and to cure any defaults in such executory contracts and unexpired leases, in a form that will permit the Debtors to disseminate immediately such evidence to the non-Debtor counterparties to such executory contracts and unexpired leases. To the extent that a Bid seeks the assumption by and assignment from the Debtors of the Leases (as defined in the 363 Process Term Sheet) and such Bid does not cure prepetition defaults under the applicable Lease, the State of Wyoming ("Wyoming") and the U.S. Department of Justice (the "DOJ") shall retain their rights to consent to the transfer of the Leases notwithstanding that the Unpaid Royalties and Taxes (as defined in the 363 Process Term Sheet).
- (g) Designation of Assumed Liabilities: A Bid must identify all liabilities that the Bidder proposes to assume. Any Bid for any Assets that have Reclamation Obligations associated therewith must also expressly assume all such Reclamation Obligations and commit to perform the other Reclamation Commitments as part of the Bid.
- (h) Bidder and Purchaser Information: A Bid must provide (i) the identity of and contact information for the Bidder and disclosure of its affiliates, (ii) the identity of the purchaser (including the equity holders thereof in the case of a new entity formed for the purpose of consummating the proposed transaction) and other participating entities (including the terms of any participation or similar arrangement), (iii) any connections or agreements of the foregoing parties with the Debtors, the Stalking Horse Purchaser and/or other Bidders, (iv) satisfactory evidence of corporate or similar authorization to close the proposed transactions, (v) satisfactory evidence of financial and other requisite ability to close the transactions and perform the Reclamation Commitments proposed in such Bid and (vi) such other additional information and due diligence as the Debtors may reasonably request, in consultation with the Consultation Parties.
- (i) Regulatory and Third-Party Approvals: A Bid must set forth (i) the regulatory and third-party approvals required to consummate the proposed transactions, (ii) the expected time period for obtaining such approvals

	<p>and (iii) satisfactory evidence of the Bidder’s ability to obtain such approvals.</p> <p>A Bid may not be conditioned on the receipt of any third-party approvals or consents (other than required Bankruptcy Court approval and required governmental, licensing or regulatory approval or consent, if any) other than (y) third-party approvals or consents that are contemplated by the 363 Process Term Sheet or (z) other approvals or consents not materially more burdensome, less favorable or more conditional than the terms of the 363 Process Term Sheet, as determined by the Debtors in consultation with the Consultation Parties. The Bidder must be reasonably likely to satisfy all necessary regulatory approvals for the sale of an identified Lot (including the Permit Transfer Requirement) and to be able to perform the Reclamation Commitments, as determined by the Debtors and the Consultation Parties.</p> <p>(j) <u>Contingencies</u>: A Bid may not (i) be materially more burdensome, less favorable or more conditional than the terms set forth in the 363 Process Term Sheet or (ii) be conditioned on obtaining financing, any internal, external or credit committee approvals or the outcome of due diligence.</p> <p>(k) <u>No Fees</u>: A Bid may not entitle the Bidder to, and each Bidder must agree not to seek, any break-up or termination fees or expense reimbursement or similar type of payment. In addition, each Bidder must expressly waive any claim or right that may be asserted for any substantial contribution administrative expense claim under section 503(b) of the Bankruptcy Code in connection with participating in the bidding process.</p> <p>(l) <u>Closing</u>: The Bid must provide a commitment to close the proposed transactions no later than the Closing Date.</p> <p>(m) <u>Bid Deadline and Submission</u>: The following parties must receive a Bid in writing (both in PDF and Word formats) on or before the Bid Deadline by email and express overnight delivery: (i) the Debtors, 1001 17th Street, Suite 1100, Denver, CO 80202, Attention: David Beckman, interim CEO (dave.beckman@fticonsulting.com); (ii) counsel to the Debtors, Squire Patton Boggs (US) LLP, 201 E. Fourth Street, Suite 1900, Cincinnati, OH 45202, Attention: Stephen D. Lerner (stephen.lerner@squirepb.com); (iii) investment banker to the Debtors, Jefferies LLC, 520 Madison Avenue, New York, NY 10022, Attention: Robert White (rwhite@jefferies.com) and Jerrod Freund (jfreund@jefferies.com); and (iv) counsel to the UCC, Whiteford Taylor Preston LLP, 200 First Avenue, Floor 3, Pittsburgh, PA 15222, Attention: Michael Roeschenthaler (mroeschenthaler@wtplaw.com).</p> <p>Notwithstanding the foregoing, the proposed transaction set forth in 363 Process Term Sheet shall be deemed to be a Qualified Bid, and the Stalking Horse Purchaser shall each be deemed to be a Qualified Bidder.</p>
<p>Auction</p>	<p>If one or more Qualified Bids (other than the 363 Process Term Sheet) for the Western/Pax Assets and/or two or more Qualified Bids for any other Lot or group of Lots of the Eastern Assets or Miscellaneous Assets are submitted by the Bid Deadline, the Debtors will conduct an auction (the “<u>Auction</u>”) on the Auction Date at a place to be determined by the Debtors.</p>

	<p>Only the Stalking Horse Purchaser and any other Qualified Bidders will be entitled to make Bids at the Auction. Each Qualified Bidder participating in the Auction must confirm that it (a) has not engaged in any collusion with respect to the bidding or sale of any of the assets described herein, (b) has reviewed, understands and accepts the Bidding Procedures and (c) has consented to the core jurisdiction of the Bankruptcy Court.</p> <p>The procedures for the Auction shall be determined by the Debtors, in consultation with the Consultation Parties, and shall include the following:</p> <ul style="list-style-type: none"> (a) <u>Auction Baseline Bid</u>: One day prior to the Auction, the Debtors will notify each Qualified Bidder as to which Qualified Bid is the highest or otherwise best Qualified Bid with respect to any Lot or group of Lots, as determined by the Debtor in consultation with the Consultation Parties (the “<u>Auction Baseline Bid</u>”). (b) <u>Overbids</u>: Each Bid for any Lot or combination of Lots must be made in increments valued at not less than \$100,000 above the Auction Baseline Bid for such Lots; <u>provided</u> that the Stalking Horse Purchaser shall be entitled to match any Auction Baseline Bid or any other Bid submitted at the Auction, which Bid shall be deemed the highest or otherwise best as compared with such matched Bid. (c) <u>Qualified Bid Requirements</u>: Each Bid submitted at the Auction must comply with the requirements for a Qualified Bid. (d) <u>Successful Bids</u>: The Auction shall continue in additional rounds of bidding until the Debtors, in consultation with the Consultation Parties, select the highest or otherwise best Qualified Bid submitted at the Auction for each Lot or combination of Lots (each, a “<u>Successful Bid</u>”). (e) <u>Backup Bids</u>: The Debtors, in consultation with the Consultation Parties, shall select the second highest or otherwise best Qualified Bid submitted at the Auction for each Lot or combination of Lots (each, a “<u>Backup Bid</u>”; the Qualified Bidder thereof, a “<u>Backup Bidder</u>”), which will remain open and irrevocable until the closing of the transactions contemplated by the applicable Successful Bid. If the transactions contemplated by a Successful Bid are not consummated, the Debtors may, after consultation with the Consultation Parties, deem the Backup Bid to be the Successful Bid. Notwithstanding the foregoing, any Backup Bid shall terminate on August 15, 2019, unless otherwise agreed by the Backup Bidder thereof.
<p>Sale Free and Clear; As Is / Where Is</p>	<p>All of the Debtors’ right, title and interest in and to the Assets will be sold free and clear of any pledges, liens, security interests, encumbrances, claims, charges, options and interests therein (collectively, the “<u>Liens</u>”), other than the Assumed Liabilities (each as defined in the applicable Qualified Bid and/or 363 Process Term Sheet, as applicable), with all Liens attaching to the proceeds of the sale in the order of priority of such Liens.</p> <p>The Assets sold pursuant to the Bidding Procedures shall be conveyed in their then-present condition, AS IS, WITH ALL FAULTS, AND WITHOUT ANY WARRANTY WHATSOEVER, EXPRESS OR IMPLIED.</p>

EXHIBIT C

Budget

Blackjewel L.L.C.

Weekly DIP Budget

Prepared as of 07/23/2019

(\$ 000's)

Week Number:	1	2	3	Total
Week Ending:	7/21	7/28	8/4	3 Week
Actuals / Forecast:	ACT	FCST	FCST	ACT/FCST
East Region				
Cash Receipts	\$ 149	\$ -	\$ -	\$ 149
Payroll	-	(462)	-	(462)
Operating Costs	(98)	(200)	(300)	(598)
Total East Region Cash Flow	50	(662)	(300)	(912)
West Region				
Cash Receipts	465	-	-	465
Payroll	-	(194)	-	(194)
Operating Costs	-	(50)	(100)	(150)
Total West Region Cash Flow	465	(244)	(100)	121
Corporate				
Insurance	(1,842)	(1,074)	(832)	(3,747)
Taxes	(0)	-	(48)	(49)
Total Corporate Cash Flow	(1,842)	(1,074)	(880)	(3,796)
Total Recurring Cash Flow	(1,327)	(1,980)	(1,280)	(4,587)
<i>Cumulative Recurring Cash Flow</i>	<i>(1,327)</i>	<i>(3,307)</i>	<i>(4,587)</i>	
One-Time / True-Up Costs				
Prepetition Benefits Withholding Amounts	-	(1,528)	-	(1,528)
Prepetition Withholding Taxes	-	(2,945)	-	(2,945)
Professional Fees	(125)	(1,200)	(600)	(1,925)
Utility Deposit	-	-	(246)	(246)
Total One-Time / True-Up Costs	(125)	(5,672)	(846)	(6,643)
DIP Draw	2,784	-	-	2,784
Cash Interest	-	-	(42)	(42)
Other Financing Fees	(1)	-	(100)	(101)
Total Financing Flows	2,783	-	(142)	2,641
Unidentified Expenses	-	(250)	(250)	(500)
Total Net Cash Flow	\$ 1,331	\$ (7,903)	\$ (2,518)	\$ (9,089)
<i>Cumulative Net Cash Flow</i>	<i>1,331</i>	<i>(6,571)</i>	<i>(9,089)</i>	
Beginning Cash	\$ 1,027	\$ 2,359	\$ (5,544)	\$ 1,027
Total Net Cash Flow	1,331	(7,903)	(2,518)	(9,089)
Ending Cash	\$ 2,359	\$ (5,544)	\$ (8,062)	\$ (8,062)

EXHIBIT D

Sale Notice

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

In re:) Chapter 11
)
Blackjewel, L.L.C., *et al.*,) Case No. 19-bk-30289
)
Debtors.¹) (Joint Administration Requested)

NOTICE OF SALE

PLEASE TAKE NOTICE that, on July 24, 2019, Blackjewel, L.L.C., and its affiliated debtors and debtors-in-possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases, filed a *Motion of Debtors for Entry of: (I) An Order (A) Approving Bidding Procedures for the Sale of the Purchased Assets to Contura Energy, Inc., (B) Scheduling an Auction, Sale hearing and Other Dates and Deadlines, (C) Authorizing the Debtors to Designate Contura Energy, Inc. as a Stalking Horse Purchaser and Grant Stalking Horse Protections, (D) Approving the Assumption and Assignment of Contracts and Leases and Related Cure Procedures, (E) Authorizing Termination of the 401(k) Plan, and (F) Granting Related Relief, and (II) An Order Approving the Sale of the Purchased Assets Free and Clear of Liens, Claims and Encumbrances* [Docket No. ___] (the “Motion”).²

PLEASE TAKE FURTHER NOTICE that, on July [___], 2019, the United States Bankruptcy Court for the Southern District of West Virginia (the “Court”) entered the *Order (A) Approving Bidding Procedures for the Sale of the Purchased Assets to Contura Energy, Inc., (B) Scheduling an Auction, (C) Authorizing the Debtors to Designate Contura Energy, Inc. as a Stalking Horse Purchaser, (D) Approving the Assumption and Assignment of Contracts and Leases and Related Cure Procedures, (E) Authorizing the Termination of the 401(k) Plan, and (F) Granting Related Relief* [Docket No. ___] (the “Bidding Procedures Order”).

PLEASE TAKE FURTHER NOTICE that the Bid Deadline for Preliminary Interested Investors or any other party in interest to submit a Qualified Bid for substantially all or any portion of the Debtors’ Assets is **5:00 p.m. (prevailing Eastern Time) on July 31, 2019**. For a Bid to be considered a Qualified Bid, parties in interest must comply with the rules and procedures set forth in the Bidding Procedures.

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor’s taxpayer identification number are as follows: Blackjewel, L.L.C. (0823); Blackjewel Holdings L.L.C. (4745); Revelation Energy Holdings, LLC (8795); Revelation Management Corporation (8908); Revelation Energy, LLC (4605); Dominion Coal Corporation (2957); Harold Keene Coal Co. LLC (6749); Vansant Coal Corporation (2785); Lone Mountain Processing, LLC (0457); Powell Mountain Energy, LLC (1024); and Cumberland River Coal LLC (2213). The headquarters for each of the Debtors is located at 1051 Main Street, Milton, West Virginia 25541-1215..

² Capitalized terms used but not defined herein shall have the meanings assigned in the Motion.

PLEASE TAKE FURTHER NOTICE that, if two or more Qualified Bids are received for any portion of the Debtors' assets, the Auction will be held on at **9:00 a.m. (prevailing Eastern Time) on August 1, 2019**, at the offices of Squire Patton Boggs (US) LLP, 201 E. Fourth St., Suite 1900, Cincinnati, Ohio 45202. In the event that no Auction is held, the Debtors will file a notice cancelling the same.

PLEASE TAKE FURTHER NOTICE that parties in interest will be permitted to file objections to the relief requested in the Motion at any time prior to the commencement of the Sale Hearing. Written objections should be filed with the Clerk of the Court and served on the following parties: (a) the Consultation Parties (as defined in the Bidding Procedures); (b) Riverstone; (c) United Bank, Inc.; (d) the Office of the United States Trustee; (e) all counterparties to potentially assigned contracts; (f) any parties known or reasonably believed to have expressed interest in the Assets; (g) all creditors listed in the Debtors' creditor matrix; (h) all parties who have appeared in these cases; (i) all applicable state and local taxing authorities; and (j) each governmental agency that is an interested party with respect to the sale transactions proposed in the Term Sheet.

PLEASE TAKE FURTHER NOTICE that the Sale Hearing to consider approval of the Sale Order will occur on **August 2, 2019 at : .m. (prevailing Eastern Time)**. The Debtors reserve the right to adjourn the Sale Hearing from time to time by filing a notice or making an announcement in open Court.

PLEASE TAKE FURTHER NOTICE that any transactions approved by the Court pursuant to a Sale Order are expected to close on or before **August 5, 2019**.

PLEASE TAKE FURTHER NOTICE that the Debtors reserve all rights to modify the Term Sheet as necessary or appropriate and, in the event of any material modifications, the Debtors will file a redline with the Court reflecting the changes being made.

PLEASE TAKE FURTHER NOTICE that copies of the Motion, Term Sheet, Bidding Procedures, and any other related documents are available upon request to Prime Clerk LLC, the Debtors' proposed notice and claims agent, at (844) 234-1462 (toll-free in U.S. or Canada) or by visiting the case website at <http://cases.primeclerk.com/Blackjewel>.

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DATED: July __, 2019

SUPPLE LAW OFFICE, PLLC

By: _____

Joe M. Supple, Bar. No. 8013
801 Viand St.
Point Pleasant, WV 25550
Telephone: 304.675.6249
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joe.supple@supplelaw.net

– and –

SQUIRE PATTON BOGGS (US) LLP

Stephen D. Lerner (admitted *pro hac vice*)
Nava Hazan (admitted *pro hac vice*)
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*Proposed Co-Counsel to the Debtors and
Debtors-in-Possession*