



*Frank W. Volk*

Frank W. Volk, Chief Judge  
United States Bankruptcy Court  
Southern District of West Virginia

**Dated: August 23rd, 2019**

**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. 19-30289  
)  
Debtors.<sup>1</sup> ) (Jointly Administered)

**ORDER (I) APPROVING THE SALE OF CERTAIN ASSETS TO RHINO ENERGY LLC FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, (II) APPROVING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (III) GRANTING RELATED RELIEF**

This matter comes before the Court on the *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* [Docket No. 312] (the “Sale

<sup>1</sup> 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.

Motion)<sup>2</sup> and on the supporting documents filed by the Debtors [Docket Nos. 540, 541 and 545]; and the Court having (i) reviewed the Sale Motion and all supporting documents, (ii) previously entered the *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* [Docket No. 356] (the “Bidding Procedures Order”), which, among other things, approved bid procedures (the “Bidding Procedures”) and related procedures for soliciting bids, conducting an auction, and assuming and assigning contracts and leases in connection with the Debtors’ sale process (the “Sale Process”); (iii) conducted a hearing on August 5 and August 6, 2019 (the “Sale Hearing”) to consider granting the relief requested in the Sale Motion, and (iv) being otherwise fully advised of the premises; and all timely objections to the Sale Motion having been withdrawn, resolved, or overruled; the Debtors having conducted the Sale Process in an appropriate and efficient manner in accordance with the Bid Procedures and having determined in their business judgment, in consultation with the Consultation Parties (as defined in the Bidding Procedures), that the bid (the “Successful Bid”) received from Rhino Energy LLC (the “Buyer”) as set forth in the General Assignment and Assumption Agreement and Bill of Sale attached hereto as **Exhibit A** (collectively, with all related agreements, documents or instruments and all exhibits, schedules and addenda, the “Sale Agreement”) is the highest and best offer for the Assets that are the subject of the Sale Agreement (collectively, the “Purchased Assets”) and will maximize value; and adequate notice of the Sale Motion, the Sale Process, and the Sale Hearing having

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning ascribed in the Sale Motion or Bidding Procedures Order (as applicable).

been given under the circumstances; and it appearing that the relief requested in the Sale Motion is in the best interests of the Debtors, their estates and creditors, and all other parties-in-interest in these chapter 11 cases; and it further appearing that the legal and factual bases set forth in the Sale Motion and at the Sale Hearing establish just cause for the relief granted herein; and after due deliberation thereon,

**IT IS HEREBY FOUND AND DETERMINED THAT:**

A. Jurisdiction and Venue. This Court has jurisdiction to consider the Sale Motion and the sale of the Debtors' Assets, including the transaction contemplated by the Sale Agreement, pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(a). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O). Venue of these cases and the Sale Motion in this District and before this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

B. Statutory Predicates. The statutory and other legal predicates for the relief sought in the Sale Motion are sections 105, 363, 365, 503, 507 and 541 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 7052, 9007, 9008 and 9014, and Local Rule 6004-1. The consummation of the transaction contemplated by the Sale Motion, Sale Agreement and this Order is legal, valid and properly authorized under all applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules, and all of the applicable requirements of such sections and rules have been complied within respect of such transaction.

C. Final Order. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), the Court expressly finds that there is no just reason for delay in the implementation of this Order, and expressly directs entry of judgment as set forth herein.

D. Notice. Good and sufficient notice of the Sale Process, the Sale Motion, the Bidding Procedures Order, the Auction, the potential assumption and assignment of contracts and leases, and the transaction contemplated by the Sale Agreement (the “Sale Transaction”) was provided to all parties entitled to receive notice and any other interested parties, including those whose identities are unknown to the Debtors, and no other or further notice is necessary or appropriate.

E. Opportunity to Object. A reasonable opportunity to object or be heard with respect to the Sale Motion and the relief requested therein has been afforded to all parties in interest.

F. Reasonable Postpetition Marketing Efforts by the Debtors. The Sale Transaction represents the highest and best bid for the Purchased Assets and is the product of reasonable efforts by the Debtors and their advisors to market and maximize the value of the Debtors’ Assets and to identify all available reasonable alternatives. The Sale Process has been led by the Debtors’ investment banker, Jefferies LLC (“Jefferies”). In particular, the Debtors and Jefferies contacted at least forty parties to solicit interest and bids, consisting of both strategic purchasers and financial investors. The Debtors provided non-disclosure agreements to interested parties and received twenty-two executed agreements. The Debtors also provided the parties that signed a non-disclosure agreement access to the Debtors’ data room. Thereafter, numerous parties conducted site visits. Ultimately, the Debtors received eighteen bids (including the bid from the Buyer) for certain subsets of their Assets, including certain bids for the Purchased Assets.

G. The Auction. The Debtors conducted an auction (the “Auction”) on August 1-3, 2019 in accordance with the Bidding Procedures, all previously entered orders of

this Court, and written auction procedures provided to bidders prior to the commencement of the Auction and read into the record at the Auction (a copy of which was filed with the Court as Exhibit A to the *Notice of Revised Auction Results and Selection of Successful Bids and Backup Bids* [Docket No. 529] (the “Auction Procedures”) that were fair, reasonable, equitable, and designed to maximize value through competitive bidding. A full and complete transcript of the Auction will be filed with the Court as soon as it becomes available. Each party that submitted a bid prior to the deadline for doing so was permitted to attend the auction and participate. Counsel and other advisors to the Official Committee of Unsecured Creditors was present as well. The Debtors conducted four successive Auctions as follows: (i) an Auction relating to Lot 1 comprised of the Debtors’ Lone Mountain and Black Mountain Assets, (ii) an Auction relating to Lot 2 comprised of the Debtors’ Virginia Subdivision Assets, (iii) an Auction relating to Lot 3 comprised of the combined Assets in Lot 1 and Lot 2, and (iv) an Auction between the Successful Bidders of Lots 1 and 2 and the Successful Bidder of Lot 3. The Debtors also conducted various Auctions for sales of discrete Assets that were not included within the bids for the Assets sold pursuant to the four Auctions noted above. Certain of these sales involved a credit bid of secured claims, to the extent the liens securing any such claim are valid, perfected and enforceable on the terms specifically described in the Auction Procedures as read into the record of the Auction. There were multiple rounds of bidding with respect to the Auctions on Lot 1 and Lot 3 and in connection with the Auction between the Successful Bidders of Lots 1 and 2 and the Successful Bidder of Lot 3. The Auction concluded on Saturday, August 3, 2019 at approximately 8:45 p.m. (prevailing Eastern Time).

H. The Successful Bids. The following is the Debtors' summary of the Successful Bid submitted by the Purchaser for the Purchased Assets:<sup>3</sup>

- a. Assets: The Virginia Subdivision Assets, as more particularly described in Buyer's bid.
- b. Cash consideration: \$850,000.
- c. Additional Consideration: Royalty with a net present value in the amount of \$208,000 (representing gross royalties in the amount of \$250,000 over 1 year, using a discount rate of 20%).
- d. Assumption of ARO: \$6,070,000.

I. Sales are Appropriate. The Sale Transaction pursuant to the Sale Agreement meets the standards for sales outside the ordinary course of business under section 363(b)(1) of the Bankruptcy Code. The Sale Transaction represents the sound business judgment of the Debtors and is appropriate in light of the facts and circumstances surrounding the Sale Transaction and these chapter 11 cases because (1) the Sale Transaction was selected as the highest and best offer for the Purchased Assets after reasonable marketing and competitive bidding at the Auction and will therefore maximize value, and (2) the terms of the sale are fair and reasonable and were negotiated in good faith and at arm's length with the Buyer.

J. Corporate Authority. Subject to the entry of this Order, the Debtors have full corporate power and authority to execute the Sale Agreement and all other documents contemplated thereby, and to consummate the transaction contemplated in connection therewith.

K. Business Justification. The Debtors have (1) articulated and demonstrated good, sufficient and sound business reasons for consummating the Sale Agreement, the sale of the Purchased Assets and the Sale Transaction; (2) appropriately exercised their business judgment, in consultation with the Consultation Parties, by entering into the Sale Transaction; and (3) demonstrated compelling circumstances for entry into the Sale Transaction pursuant to

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<sup>3</sup> The following is only a summary and is provided for illustrative purposes only. All bids described are subject to the specific terms and conditions set forth in the respective Sale Agreement. In the event of any inconsistency between the following summaries of the bids and their respective Sale Agreement, the Sale Agreement shall govern.

section 363(b)(1) of the Bankruptcy Code, in that, among other things, the immediate approval by the Court of the Sale Transaction with the Buyer is necessary and appropriate to maximize the value of the Debtors' estates.

L. Best Interests. Approval of the Sale Agreement and the consummation of the Sale Transaction is in the best interests of the Debtors, their estates, their creditors and other parties in interest.

M. Highest or Otherwise Best. As demonstrated by (1) the testimony and/or other evidence proffered or adduced at the Sale Hearing; and (2) the representations of counsel made on the record at the Sale Hearing, the Buyer's offer for the purchase of the Purchased Assets and assumption of certain liabilities as set forth in the Sale Agreement is fair and reasonable and constitutes the highest or otherwise best offer possible for the Purchased Assets and provides for consideration which exceeds the total consideration that the Debtors could have received by any other party for the Purchased Assets. The consideration for the Purchased Assets is fair and reasonable and constitutes reasonably equivalent value under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia. The Sale Transaction will provide a greater recovery for the Debtors' creditors with respect to the Purchased Assets than would be provided by any other practically available alternative. Taking into consideration all relevant factors and circumstances, no other entity has offered to purchase the Purchased Assets for greater total economic value to the Debtors or their estates.

N. Arm's Length Transaction and Buyer's Good Faith. The Sale Agreement was negotiated, proposed and entered into by the Debtors and the Buyer from arm's-length bargaining positions, without collusion, in good faith within the meaning of section 363(m) of

the Bankruptcy Code. The Buyer is not an “insider” of the Debtors, as that term is defined in section 101(31) of the Bankruptcy Code. The Sale Agreement was not entered into, and neither the Debtors nor the Buyer has entered into the Sale Agreement, or proposes to consummate the Sale Transaction, for the purpose of hindering, delaying or defrauding creditors of the Debtors under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof, or the District of Columbia. Neither the Debtors nor the Buyer have entered into the Sale Agreement or is consummating the Sale Transaction with any fraudulent or improper purpose.

O. No Sub Rosa Plan. The consummation of the Sale Transaction outside of a chapter 11 plan pursuant to the Sale Agreement neither impermissibly restructures the rights of the Debtors’ creditors nor impermissibly dictates the terms of a plan of reorganization or liquidation for the Debtors. The Sale Transaction does not constitute a *sub rosa* plan.

P. No Liability Under Section 363(n). Neither the Debtors nor the Buyer has engaged in any conduct that would cause or permit the Sale Agreement to be avoided under section 363(n) of the Bankruptcy Code. Specifically, the Buyer has not acted in a collusive manner with any person and the purchase price was not controlled by any agreement with unrelated third parties.

Q. Free and Clear Findings Required by the Buyer. The Purchased Assets constitute property of the Debtors’ estates and title thereto is vested in the Debtors’ estates within the meaning of section 541(a) of the Bankruptcy Code. The Buyer would not have entered into the Sale Agreement and would not consummate the Sale Transaction if the Purchased Assets were not being sold pursuant to section 363(f) of the Bankruptcy Code, free and clear, except for Assumed Liabilities expressly provided for by the Sale Agreement, of all liens, claims,



encumbrances and interests to the fullest extent permitted by section 363(f) of the Bankruptcy Code and any other applicable law, including, without limitation, (i) all liens (statutory or otherwise), claims, mortgages, deeds of trust, pledges, charges, security interests, charges, rights of first refusal, hypothecations, encumbrances, royalties, easements, leases or subleases, rights-of-way, encroachments, restrictive covenants, restrictions on transferability or other similar restrictions, rights of offset or recoupment, subleases, leases or conditional sale arrangements (collectively, the “Liens”), (ii) all claims as defined in section 101(5) of the Bankruptcy Code, including, but not limited to, all rights or causes of action (whether in law or in equity), proceedings, warranties, guarantees, indemnities, rights of recovery, setoff, recoupment, indemnity or contribution, obligations, demands, restrictions, indemnification claims or liabilities relating to any act or omission of the Debtors or any other person prior to the closing, consent rights, options, contract rights, covenants and interests of any kind or nature whatsoever (known or unknown, matured or unmatured, accrued or contingent and regardless of whether currently exercisable), whether arising prior to or subsequent to the commencement of these chapter 11 cases, and whether imposed by agreement, understanding, law, equity or otherwise (collectively the “Claims”), and (iii) all debts, liabilities, obligations, covenants running with the land, including, with respect to executory leases, royalty agreements or other encumbrances the existence of which would be deemed to be a default under the applicable lease or otherwise in violation of applicable law, contractual rights and claims and labor, employment and pension claims, in each case, whether known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or un-matured, material or non-material, disputed or undisputed, whether arising prior to or subsequent to the

commencement of these chapter 11 cases, and whether imposed by agreement, understanding, law, equity or otherwise (collectively the “Interests”). Except for Assumed Liabilities expressly provided for by the Sale Agreement, the Sale Transaction shall be free and clear of, and the Buyer shall not be responsible for, any Liens, Claims or Interests, including, without limitation, in respect of the following: (i) any rights or Claims based on any successor or transferee liability, (ii) any Liens, Claims or Interests that purport to give to any party a right or option to effect any forfeiture, modification, right of first refusal, or termination of the Debtors’ or the Buyer’s interest in the Purchased Assets, or any similar rights; (iii) any labor or employment agreements; (iv) mortgages, deeds of trust and security interests; (v) intercompany loans and receivables between the Debtors or non-Debtor affiliates; (vi) any pension, multiemployer plan (as such term is defined in Section 3(37) or Section 4001(a)(3) of ERISA), health or welfare, compensation or other employee benefit plans, agreements, practices and programs, including, without limitation, any pension plans of the Debtors or any multiemployer plan to which the Debtors have at any time contributed to or had any liability or potential liability; (vii) any other employee, worker’s compensation, occupational disease or unemployment or temporary disability related claim, including, without limitation, claims that might otherwise arise under or pursuant to (a) the Employee Retirement Income Security Act of 1974, as amended, (b) the Fair Labor Standards Act, (c) Title VII of the Civil Rights Act of 1964, (d) the Federal Rehabilitation Act of 1973, (e) the National Labor Relations Act, (f) the Age Discrimination and Employment Act of 1967 and Age Discrimination in Employment Act, as amended, (g) the Americans with Disabilities Act of 1990, (h) the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, including, without limitation, the requirements of Part 6 of Subtitle B of Title I of ERISA and Section 4980B of the Code and of any similar state law (collectively, “COBRA”), (i) state discrimination

laws, (j) state unemployment compensation laws or any other similar state laws, or (k) any other state or federal benefits or claims relating to any employment with the Debtors or any of their predecessors; (viii) the Federal Mine Safety and Health Act of 1977 or its associated regulations; (ix) penalties of any kind whatsoever assessed against the Debtors by the United States Department of Labor's Mine Safety and Health Administration; (x) any bulk sales or similar law; (xi) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended, and any taxes arising under or out of, in connection with, or in any way relating to the operation of the Purchased Assets prior to the closing; (xii) any executory contract or unexpired lease that will not be assumed and assigned pursuant to this Order and the Sale Agreement; and (xiii) any other liabilities not expressly assumed as provided in the Sale Agreement. A sale of the Purchased Assets other than one free and clear of all Liens, Claims, and Interests would yield substantially less value for the Debtors' estates, with less certainty, than the Sale Transaction as contemplated. Therefore, the Sale Transaction contemplated by the Sale Agreement free and clear of all Liens, Claims and Interests, except for Assumed Liabilities, is in the best interests of the Debtors, their estates and creditors, and all other parties in interest.

R. Satisfaction of 363(f) Standards. The Debtors may sell the Purchased Assets free and clear of all Liens, Claims and Interests of any kind or nature whatsoever, because, in each case, one or more of the standards set forth in sections 363(f)(1)-(5) of the Bankruptcy Code have been satisfied. Those holders of Liens, Claims and Interests who did not object (or who withdrew their objections) to the Sale Motion or the Sale Transaction are deemed to have consented to the Sale Motion and the Sale Transaction pursuant to section 363(f)(2) of the Bankruptcy Code. Except as specifically provided in the Sale Agreement or this Order, all persons and entities asserting or holding any Liens, Claims and Interests in or with respect to the

Purchased Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated), however arising, shall be forever barred, estopped, and permanently enjoined from asserting, prosecuting or otherwise pursuing such Liens, Claims, or Interests against the Buyer or the Purchased Assets.

S. Executory Contracts. Upon compliance with the assumption and assignment procedures set forth in the Bidding Procedures Order, as detailed more specifically in the *Notice of Executory Contracts and Unexpired Leases that May be Assumed and Assigned in Connection with the Sale of the Debtors' Assets and Related Proposed Cure Costs* [Docket No. 525] (as may be supplemented from time to time, the "Cure Notice"), the Debtors have demonstrated that it is an exercise of their sound business judgment to sell, assume and assign Executory Contracts to the Buyer in connection with the consummation of the Sale Transaction, and the assumption and assignment of Executory Contracts is in the best interests of the Debtors, their estates and creditors, and other parties in interest. The Executory Contracts assigned to the Buyer are an integral part of the Purchased Assets being purchased by the Buyer, and, accordingly, such assumption and assignment of the Executory Contracts and the liabilities associated therewith are reasonable and enhance the value of the Debtors' bankruptcy estates.

T. Cure and Adequate Assurance. Upon compliance with the assumption and assignment procedures set forth in the Bidding Procedures Order and Cure Notice, including the resolution of any Assumption/Assignment Objections, the Buyer will have cured or demonstrated their ability to cure any default with respect to any act or omission that occurred prior to the closing under any of the Executory Contracts, within the meaning of Section 365(b)(1)(A) of the Bankruptcy Code. Upon expiration of the applicable objection deadline, the proposed Cure Costs set forth in the Cure Notice or any other cure amount reached by agreement

after an Assumption/Assignment Objection are deemed the amounts necessary to “cure” within the meaning of section 365(b)(1) of the Bankruptcy Code all “defaults” within the meaning of Section 365(b) of the Bankruptcy Code under such Executory Contracts. The final amount of all Cure Costs will be determined and paid pursuant to the terms of the Bidding Procedures Order, Cure Notice and the Sale Agreement. The Buyer’s promise to perform the obligations under the relevant Executory Contracts arising after the closing shall constitute adequate assurance of its future performance of and under the relevant Executory Contracts, within the meaning of sections 365(b)(1) and 365(f)(2) of the Bankruptcy Code. All counterparties to the Executory Contracts who do not file an Assumption/Assignment Objection consistent with the Bidding Procedures Order and Cure Notice are deemed to consent to the assumption by the Debtors of their respective Executory Contract and the assignment thereof to the Buyer. This Court finds that, with respect to all Executory Contracts, the payment of the Cure Costs (subject to compliance with the Bidding Procedures Order and Cure Notice, including the right to object) is appropriate and is deemed to fully satisfy the Debtors’ obligations under section 365(b) of the Bankruptcy Code. This Court further finds that the Assumption/Assignment Procedures set forth in the Bidding Procedures Order and Cure Notice are reasonable and give contract counterparties adequate notice of and opportunity to respond to the proposed assumption and assignment of the Executory Contracts. Accordingly, upon compliance with the procedures set forth in the Bidding Procedures Order and Cure Notice, all of the requirements of section 365(b) of the Bankruptcy Code will be satisfied for the assumption and the assignment by the Debtors to the Buyer of each of the Executory Contracts under the Sale Agreement. To the extent any Executory Contract is not an executory contract within the meaning of section 365 of the Bankruptcy Code, it shall be

transferred to the Buyer in accordance with the terms of this Order that are applicable to the Purchased Assets.

U. Legal and Factual Bases. The legal and factual bases set forth in the Sale Motion and at the Sale Hearing establish just cause for the relief granted herein.

V. Validity of Transfer. As of the closing, the transfer of the Purchased Assets to the Buyer will be a legal, valid and effective transfer of the Purchased Assets, and will vest the Buyer with all right, title and interest of the Debtors in and to the Purchased Assets, free and clear of all Liens, Claims and Interests, except to the extent provided in the Sale Agreement and this Order.

W. Incorporation of Sale Hearing. All findings of fact and conclusions of law made or announced by the Court at the Sale Hearing are expressly adopted by, and incorporated in, this Order as if they had been fully set forth herein.

**NOW, THEREFORE, IT IS ORDERED THAT:**

1. Sale Motion Granted. The Sale Motion is hereby GRANTED as set forth herein.

2. Findings of Fact and Conclusions of Law. The findings of fact set forth above and conclusions of law stated herein shall constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any finding of fact later shall be determined to be a conclusion of law, it shall be so deemed and deemed so ordered, and to the extent any conclusion of law shall be determined to be a finding of fact, it shall be so deemed and deemed so ordered.

3. Objections. All objections and responses, if any, to the sale of the Purchased Assets to the Buyer or related relief requested in Sale Motion that have not been withdrawn, waived or settled as announced to the Court at the Sale Hearing or by stipulation filed with the Court or pursuant to the terms of this Order, and all reservations of rights included therein, are hereby overruled on the merits, with prejudice. All persons and entities given notice of the Sale Motion that failed to timely object thereto are deemed to consent to the relief sought therein.

4. Approval of the Sale Agreement. The Sale Transaction and specific terms of the Sale Agreement are hereby authorized and approved pursuant to, inter alia, sections 105(a), 363(b) and 365(a) of the Bankruptcy Code. Pursuant to section 363(b) of the Bankruptcy Code, the Debtors are authorized to consummate the Sale Transaction pursuant to and in accordance with the terms and conditions set forth in the Sale Agreement and this Order. The Debtors, and their affiliates, officers, employees and agents, are authorized to execute, deliver and perform under, and otherwise consummate and implement, the Sale Agreement together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Sale Agreement, and to take all further actions as may be (a) reasonably requested by the Buyer for the purpose of assigning, transferring, granting, conveying and conferring to the Buyer, or reducing to possession, the Purchased Assets, or (b) necessary or appropriate to the performance of the obligations contemplated by the Sale Agreement, including, without limitation, executing any necessary or appropriate document or instrument, all without further order of the Court.

5. Good Faith. The Sale Transaction has been undertaken by the Buyer in good faith. The Buyer satisfies the good faith requirement of section 363(m) of the Bankruptcy

Code and, accordingly, the Buyer and the Sale Transaction is entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code. Pursuant to section 363(m) of the Bankruptcy Code, if any or all of the provisions of this Order are hereafter reversed, modified, or vacated by a subsequent order of this Court or any other court, such reversal, modification, or vacatur shall not affect the validity and enforceability of any sale, transfer or assignment under the Sale Agreement or obligation or right granted pursuant to the terms of this Order, and notwithstanding any reversal, modification or vacatur shall be governed in all respects by the original provisions of this Order or the Sale Agreement, as the case may be. The Sale Transaction approved by this Order is not subject to avoidance and no damages may be awarded pursuant to section 363(n) of the Bankruptcy Code.

6. Transfer of Assets Free and Clear.

A. Pursuant to sections 105(a), 363(b), 363(f) and 365 of the Bankruptcy Code, the Debtors are authorized and directed to transfer the Purchased Assets in accordance with the terms of the Sale Agreement free and clear of all Liens, Claims, and Interests (except for Assumed Liabilities) to the fullest extent permitted by section 363(f) of the Bankruptcy Code and any other applicable law. The Purchased Assets shall be transferred to the Buyer, and upon consummation of the Sale Agreement, such transfer shall (1) be valid, legal, binding and effective; (2) vest the Buyer with all right, title and interest of the Debtors in the Purchased Assets; and (3) be free and clear of all Liens, Claims and Interests (except for Assumed Liabilities). All Liens, Claims and Interests shall attach to the net proceeds of the Sale Transaction, in the order of their priority and with the same validity, force and effect that they now have against the Purchased Assets, subject to any rights, claims and defenses the Debtors or their estates, as applicable, may possess with respect thereto. Nothing herein is intended or shall



be deemed to be an adjudication of the extent, validity, enforceability and/or priority of any conflicting or competing Liens, Claims or Interests with respect to the Purchased Assets, and all rights are reserved with respect to the same. Upon the occurrence of the closing, this Order shall be considered and constitute for any and all purposes a full and complete general assignment, conveyance and transfer of the Purchased Assets acquired by the Buyer under the Sale Agreement transferring good, marketable and indefeasible title and interest in the Purchased Assets to the Buyer free and clear of all Liens, Claims and Interests (except for Assumed Liabilities). Each and every federal, state, and local governmental agency, quasi-agency, or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the Sale Transaction. All persons and entities are prohibited and enjoined from taking any action to adversely affect or interfere with the ability of the Debtors to transfer the Purchased Assets to the Buyer in accordance with the Sale Agreement and this Order.

B. Except as otherwise provided in the Sale Agreement, all Governmental Units (as defined in sections 101(27) and 101(41) of the Bankruptcy Code) and all persons and entities (and their respective successors and assigns), including, without limitation, all debt security holders, equity security holders, governmental, tax and regulatory authorities, lenders, current and former employees, pension plans, multiemployer pension plans, labor unions, trade creditors and any other creditors holding Liens, Claims or Interests (whether legal or equitable, secured or unsecured, known or unknown, matured or unmatured, contingent or non-contingent, liquidated or unliquidated, senior or subordinated) arising under or out of, in connection with, or in any way relating to, the Debtors, the Purchased Assets, or the transfer of the Purchased Assets to the Buyer, are hereby forever barred, estopped and permanently enjoined from asserting or

pursuing any Liens, Claims or Interests (except for Permitted Encumbrances and Assumed Liabilities) against the Buyer, its affiliates, successors or assigns, its property or the Purchased Assets, including, without limitation, taking any of the following actions with respect to a Claim: (1) commencing or continuing, in any manner, any action or other proceeding against the Buyer, its affiliates, successors or assigns, assets (including the Purchased Assets) or properties; (2) enforcing, attaching, collecting or recovering, in any manner, any judgment, award, decree, or order against the Buyer, its affiliates, successors or assigns, assets, or properties; (3) creating, perfecting, or enforcing any liens, claims, encumbrances or other interests against the Debtors as against the Buyer, or its affiliates, successors, assigns, assets (including the Purchased Assets) or properties; (4) asserting any setoff, right of subrogation or recoupment of any kind for any obligation of any of the Debtors as against any obligation due to the Buyer, or its affiliates, successors or assigns or their respective assets, including the Purchased Assets; (5) commencing or continuing any action, in any manner or place, that does not comply, or is inconsistent with, the provisions of this Order or the agreements or actions contemplated or taken in respect thereof; or (6) denying, refusing, delaying or otherwise frustrating the transfer or assignment of any permits, licenses, or other approvals previously held by the Debtors that were necessary for the Purchased Assets.

C. This Order: (1) shall be effective as a determination that, as of the closing, all Liens, Claims and Interests (except for Assumed Liabilities), have been unconditionally released, discharged and terminated as to each Buyer and the Purchased Assets, and that the conveyances and transfers described herein have been effected; and (2) is and shall be binding upon and govern the acts of all persons and entities, including all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds,

administrative agencies, governmental departments, secretaries of state, federal and local officials and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease; and each of the foregoing persons and entities is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transaction contemplated by the Sale Agreement.

D. Upon the closing, each of the Debtors' creditors and any other holder of a Lien, Claim or Interest is authorized and directed to execute such documents and take all other actions as may be necessary to release its Lien, Claim or Interest in the Purchased Assets (other than Assumed Liabilities), if any, as such Lien, Claim or Interest may have been recorded or may otherwise exist. If any person or entity that has filed financing statements, mortgages, deeds of trust, mechanic's liens, *lis pendens* or other documents or agreements evidencing Liens, Claims or Interests against the Debtors or the Purchased Assets has not delivered to the Debtors prior to the closing of the Sale Transaction, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all interests which the person or entity has with respect to the Debtors or the Purchased Assets or otherwise, then with regard to the Purchased Assets that are purchased by the Buyer pursuant to the Sale Agreement and this Order: (1) the Debtors are hereby authorized, and the Buyer is hereby authorized, to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Purchased Assets; and (2) the Buyer is hereby authorized to file, register or otherwise record a certified copy of this Order, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all Liens, Claims and

Interests (except for Permitted Encumbrances and Assumed Liabilities) against the Purchased Assets. Each and every federal, state, and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transaction contemplated by the Sale Agreement, including, without limitation, recordation of this Order. This Order is deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state or local government agency, department or office. This Order shall be binding upon and shall govern the acts of all persons including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of such assets or other property interests. Notwithstanding and without limiting the foregoing, the provisions of this Order authorizing the sale and assignment of the Purchased Assets free and clear of Liens, Claims and Interests (except for Permitted Encumbrances and Assumed Liabilities), shall be self-executing, and neither the Debtors nor the Buyer shall be required to execute or file releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate and implement the provisions of this Order.

E. Following the closing of the Sale Transaction, no holder of any Claim shall interfere with the Buyer's title to or use and enjoyment of the Purchased Assets based on or related to any such Claim or based on any actions the Debtors may take in their chapter 11 cases.

7. Surrender of Possession. All entities that are currently, or on the closing may be, in possession of some or all of the Purchased Assets are hereby directed to surrender possession of the Purchased Assets to the Buyer on the closing under its Sale Agreement, unless the Buyer otherwise agrees.

8. United Bank. For the avoidance of doubt, the Buyer is not acquiring any Assets of the Debtors pursuant to the Sale Agreement upon which United Bank asserts a Lien, Claim or Interest (the "United Collateral"). The Buyer shall permit United Bank (subject to the requirements of the Bankruptcy Code) or the Debtors reasonable ingress, egress and regress to its real properties necessary to retrieve the United Collateral.

9. Caterpillar. For the avoidance of doubt, the Buyer is not acquiring any Assets of the Debtors pursuant to the Sale Agreement upon which Caterpillar Financial Services ("Caterpillar") asserts a Lien, Claim or Interest (the "Caterpillar Collateral"). The Buyer shall permit Caterpillar (subject to the requirements of the Bankruptcy Code) or the Debtors reasonable ingress, egress and regress to its real properties necessary to retrieve the Caterpillar Collateral.

10. Environmental Matters. Nothing in this Order or the Sale Agreement releases, discharges, nullifies, precludes, or enjoins the enforcement of any environmental liability to a Governmental Unit or any police or regulatory liability (including but not limited to reclamation and mitigation and any associated long term protection requirements) to a Governmental Unit that any entity would be subject to as the owner or operator of the Purchased Assets after the closing. Nothing in this Order or the Sale Agreement authorizes the transfer or assignment to the Buyer of any governmental (a) license, (b) permit, (c) registration, (d) authorization, or (e) approval, or the discontinuation of any obligation thereunder, without

compliance with all applicable legal requirements under non-bankruptcy law governing such transfers or assignments. Notwithstanding the foregoing sentence, nothing in this Order shall: (i) be interpreted to deem the Buyer as the successor to the Debtors under any successor liability doctrine with respect to any liabilities under environmental statutes or regulations for penalties for days of violation prior to the closing or for liabilities relating to off-site disposal of waste by the Debtors prior to the closing; (ii) create for any Governmental Unit any substantive right that does not already exist under law; or (iii) be deemed or construed to be an admission of liability by the Debtors.

11. Assumption and Assignment of Executory Contracts.

A. Upon compliance with the procedures set forth in the Bidding Procedures Order and the Cure Notice regarding the assumption and assignment of Executory Contracts (including the resolution of any objections thereto), without further order of the Court, the Debtors are authorized to assume and assign the Executory Contracts designated for assignment to the Buyer pursuant to the Sale Agreement; provided, however, that there shall be no assumption of any such contract or lease absent simultaneous assignment thereof to the Buyer. Upon assumption and assignment, the Buyer shall be deemed to be substituted for the Debtors as a party to each of the Executory Contracts and, pursuant to section 365(k) of the Bankruptcy Code, the Debtors and their estates shall be relieved from any liability for any post-closing breach of any such Executory Contract after assignment of such Executory Contract to the Buyer. In accordance with section 365(b)(2) and (f) of the Bankruptcy Code, upon transfer of the Executory Contracts to the Buyer, (i) the Buyer shall have all of the rights of the Debtors thereunder, free and clear of all Liens, Claims and Interests, (except for Permitted Encumbrances and Assumed Liabilities), and each provision of such Executory Contracts shall remain in full

force and effect for the benefit of the Buyer, notwithstanding any provision in such contract, lease or in applicable law that prohibits, restricts or limits in any way such assignment or transfer; and (ii) none of the Executory Contracts may be terminated, or the rights of any party modified in any respect, including pursuant to any “change of control” clause, by any other party thereto as a result of the consummation of the transactions contemplated by the Sale Agreement.

B. Subject to applicable provisions of section 365 of the Bankruptcy Code, compliance with the procedures set forth in the Bidding Procedures Order and Cure Notice governing the assumption and assignment of Executory Contracts (including resolution of any objections), the Sale Agreement and the respective terms thereof with respect to Cure Costs, without further order of the Court, all defaults or other obligations of the Debtors under the Executory Contracts arising or accruing prior to the closing will be deemed cured or shall be promptly cured in accordance with the terms hereof as a condition precedent to the assumption and assignment of the respective Executory Contracts (and without such a cure the Buyer shall have no rights in or to the respective Executory Contracts).

C. Upon transfer of the applicable Executory Contracts to the Buyer, without further order of the Court, there shall be no rent accelerations, assignment fees, increases or any other fees charged or chargeable to the Buyer as a result of the assumption, assignment and sale of the Executory Contracts. Any provision in any Executory Contract that prohibits or conditions the assignment of such contract or lease, or allows the counterparty to such contract or lease to terminate, recapture, impose any penalty, condition renewal or extension, or modify any term or condition upon the assignment of such contract or lease, constitutes an unenforceable anti-assignment provision, and is void and of no force and effect. The validity of the

assumption, assignment and sale of the Executory Contracts to the Buyer shall not be affected by any existing dispute between the Debtors and any counterparty to an Executory Contract.

12. Permanent Injunction. All persons and entities are prohibited and enjoined from taking any action to adversely affect or interfere with the ability of the Debtors to transfer the Purchased Assets to the Buyer in accordance with the Sale Agreement and this Order. Following the closing, except for persons entitled to enforce Assumed Liabilities, all persons (including, but not limited to, (i) the Debtors and/or their respective successors (including any trustee), (ii) creditors, (iii) investors, (iv) current and former employees and shareholders, (v) administrative agencies, (vi) Governmental Units, (vii) secretaries of state, (viii) federal, state, and local officials, including those maintaining any authority relating to any environmental, health and safety laws, and (ix) the successors and assigns of each of the foregoing) holding Liens, Claims or Interests in the Purchased Assets or against the Debtors with respect to the Purchased Assets of any kind or nature whatsoever shall be, and hereby are, forever barred, estopped, and permanently enjoined from asserting, prosecuting, or otherwise pursuing any Liens, Claims or Interests of any kind or nature whatsoever against the Buyer or any affiliate of the Buyer or any of its respective property, successors and assigns, or the Purchased Assets, as an alleged successor or on any other grounds; provided that, for the avoidance of doubt, the rights and protections granted to United Bank and Caterpillar in paragraphs 8 and 9 hereof are expressly preserved. No person shall assert, and the Buyer and the Purchased Assets shall not be subject to, any defaults, breaches, counterclaims, offsets, defenses (whether contractual or otherwise, including, without limitation, any right of recoupment), liabilities, claims and interests, or basis of any kind or nature whatsoever to delay,



defer, or impair any right of the Buyer or the Debtors, or any obligation of any other party, under or with respect to, any Purchased Assets, with respect to any act or omission that occurred prior to the closing or with respect to any other agreement or any obligation of the Debtors that is not an Assumed Liability.

13. Exculpation and Release. Neither the Buyer nor any of its affiliates, successors, agents, employees, managers, members, officers, directors, attorneys, and/or assigns, shall have, or incur any liability to, or be subject to any action by, the Debtors or any of their predecessors, successors, or assigns, arising out of the negotiation, investigation, preparation, execution, or delivery of the Sale Agreement and the entry into and consummation of the Sale Transaction, except as expressly provided in the Sale Agreement and this Order.

14. No Interference. Following the closing, no holder of any Lien, Claim or Interest in the Purchased Assets (except holders of Permitted Encumbrances and Assumed Liabilities solely in accordance with applicable law) shall interfere with the Buyer's title to, or use and enjoyment of, the Purchased Assets based on, or related to, any such Lien, Claim or Interest, or based on any actions the Debtors may take in these cases.

15. Post-Closing Actions and Transactions. The Debtors and the Buyer, and each of their respective officers, employees, and agents, will be authorized and empowered to take all actions and execute and deliver any and all documents and instruments that either the Debtors or the Buyer deems necessary or appropriate to implement and effectuate the terms of the Sale Agreement and this Order. Further, effective as of the closing, the Buyer and its respective successors and assigns shall be designated and appointed the Debtors' true and lawful attorney and attorneys, with full power of substitution, in the Debtors' name and stead,

its successors and assigns, to demand and receive any and all of the Purchased Assets, and from time to time institute and prosecute in the name of the Buyer, for the benefit of such Buyer, its successors and assigns, any and all proceedings at law, in equity, or otherwise, that such Buyer, its successors or assigns, may deem proper for the collection or reduction to possession of any of the Purchased Assets, and to do all acts and things with respect to the Purchased Assets that the Buyer, its successors and assigns, shall deem desirable. All of the foregoing powers granted to the Buyer are coupled with an interest and are irrevocable by the Debtors.

16. Operation by Buyer. To the maximum extent available under applicable law: (a) each Buyer shall be authorized, as of the closing, to operate under any license, permit, registration, and any other governmental authorization or approval of the Debtors with respect to the Purchased Assets and the Executory Contracts; (b) all such licenses, permits, registrations, and governmental authorizations and approvals are deemed to have been, and hereby are, directed to be transferred to the Buyer as of the closing; and (c) to the extent provided by section 525 of the Bankruptcy Code, no Governmental Unit may deny, revoke, suspend or refuse to renew any permit, license, or similar grant relating to the operation of the Purchased Assets sold, transferred or conveyed to the Buyer on account of the filing or pendency of these chapter 11 cases or the consummation of the Sale Transaction contemplated by the Sale Agreement. Notwithstanding the foregoing, nothing herein is intended or shall be deemed to relieve the Buyer from having to comply with any requirements or approval process under applicable non-bankruptcy law with respect to the transfer of any governmental license or permit.

17. Enforcement. The terms and provisions of the Sale Agreement and this Order, and the transaction contemplated thereby and hereby, shall, as applicable, be specifically enforceable against and be binding in all respects upon, or shall inure to the benefit of, the

Debtors, their estates, their creditors (known and unknown), counterparties to Executory Contracts, any Governmental Unit which regulates the Debtors' business, the Buyer, and their respective affiliates, successors and assigns, and any affected third parties, including all entities asserting any Liens, Claims or Interests, notwithstanding any subsequent appointment of any trustee, examiner or receiver of the Debtors under any chapter of the Bankruptcy Code or any other law, and all such terms and provisions likewise shall be binding on and specifically enforceable against such trustee, examiner or receiver, and shall not be subject to rejection or avoidance by the Debtors, their estates, their creditors, any other representatives of their estates, or any trustee, examiner or receiver.

18. No Successor Liability.

A. Except for the Assumed Liabilities and Cure Costs, to be paid solely to the extent provided for in the Sale Agreement and this Order, neither the Buyer, nor any of its respective successors, assigns, agents, employees, managers, members, officers, directors, attorneys, or affiliates shall have any liability for any Lien, Claim or Interest that (i) arose or occurred prior to the closing, (ii) could have otherwise been asserted against the Debtors prior to the closing, or (iii) is related to the Purchased Assets prior to the closing. The Buyer is not and shall not be deemed a "successor" to the Debtors or their estates, have, *de facto* or otherwise, merged with or into the Debtors or be a mere continuation or substantial continuation of the Debtors or the enterprise of the Debtors under any theory of law or equity as a result of any action taken in connection with the Sale Agreement or the transaction or documents ancillary thereto or contemplated thereby or in connection with the acquisition of the Purchased Assets.

B. Without limiting the foregoing, and except to the extent of the Assumed Liabilities, or as otherwise set forth in the Sale Agreement or this Order, the Buyer shall not have

any successor, transferee, derivative, or vicarious liabilities of any kind or character for any Liens, Claims or Interests, including under any theory of successor or transferee liability, *de facto* merger or continuity, whether known or unknown as of the closing, now existing or hereafter arising, whether fixed or contingent, asserted or unasserted, liquidated or unliquidated, with respect to of any of the following: (i) any foreign, federal, state, or local revenue, pension, ERISA, tax, labor, employment, antitrust, environmental, or other law, rule, or regulation (including without limitation filing requirements under any such laws, rules or regulations); (ii) any products liability law, rule, regulation, or doctrine with respect to the Debtors' liability under such law, rule or regulation, or doctrine, or under any product warranty liability law or doctrine; (iii) any employment or labor agreements, consulting agreements, severance arrangements, change-in-control agreements, or other similar agreement to which the Debtors are a party; (iv) any pension, welfare, compensation, or other employee benefit plans, agreements, practices, and programs, including, without limitation, any pension plan of the Debtors; (v) the cessation of the Debtors' operations, dismissal of employees, or termination of employment or labor agreements or pension, welfare, compensation, or other employee benefit plans, agreements, practices and programs, or obligations that might otherwise arise from or pursuant to any statute or regulation including but not limited to the (a) Employee Retirement Income Security Act of 1974, as amended, (b) the Fair Labor Standards Act, (c) Title VII of the Civil Rights Act of 1964, (d) the Federal Rehabilitation Act of 1973, (e) the National Labor Relations Act, (f) the Age Discrimination and Employment Act of 1967, (g) the Americans with Disabilities Act of 1990, (h) the Worker Adjustment and Retaining Act of 1988 or (i) COBRA; (vi) environmental liabilities, debts, Claims, or obligations arising from conditions first existing on or prior to the closing (including, without limitation, the presence of hazardous, toxic,

polluting, or contamination substances or wastes), which may be asserted on any basis, including, without limitation, under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*; (vii) any liabilities, debts, or obligations of or required to be paid by the Debtors for any taxes of any kind for any period; (viii) any liabilities, debts, commitments, or obligations for any taxes relating to the operation of the Purchased Assets prior to the closing; (ix) any bulk sale law; and (x) any litigation.

19. Fair Consideration. The consideration provided by the Buyer for the Purchased Assets under the Sale Agreement shall be deemed to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and the laws of the United States, any state, territory, possession, or the District of Columbia. The Sale Transaction may not be avoided under section 363(n) of the Bankruptcy Code. The Sale Agreement was not entered into, and the Sale Transaction is not being consummated, for the purpose of hindering, delaying, or defrauding creditors of the Debtors under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof, or the District of Columbia, or any other applicable law. Neither the Debtors nor the Buyer have entered into the Sale Agreement or any agreement contemplated thereby or is consummating the Sale Transaction with any fraudulent or otherwise improper purpose, including, without limitation, to evade any pension liabilities. No other person or entity or group of persons or entities has offered to purchase the Purchased Assets for an amount or on terms that would provide greater value to the Debtors and their estates than the value provided by the Buyer. The Court's approval of the Sale Motion and the Sale Agreement is in the best interests of the Debtors, their estates and creditors, and all other parties in interest.

20. Retention of Jurisdiction. This Court retains jurisdiction, pursuant to its statutory powers under 28 U.S.C. § 157(b)(2), to, among other things, interpret, implement, and enforce the terms and provisions of this Order, all amendments thereto, and any waivers and consents thereunder, including, but not limited to, retaining jurisdiction to (i) compel delivery of the Purchased Assets to the Buyer; (ii) interpret, implement, and enforce the provisions of this Order; (iii) protect the Buyer, any of the Buyer's affiliates, or any agent of the foregoing, against any Liens, Claims or Interests against the Debtors or the Purchased Assets of any kind or nature whatsoever, except for Assumed Liabilities and (iv) enter any order under sections 363 and 365 of the Bankruptcy Code.

21. Subsequent Plan Provisions. Nothing contained in any chapter 11 plan confirmed in any Debtor's bankruptcy case or any order confirming any such plan or in any other order in these chapter 11 cases shall alter, conflict with, or derogate from, the provisions of the Sale Agreement or this Order.

22. No Bulk Sales. No bulk sales law or similar law of any state or other jurisdiction shall apply in any way to the transaction contemplated by the Sale Agreement, the Sale Motion and this Order.

23. Modification. The Sale Agreement may be modified, amended or supplemented by the Buyer and the Debtors in a writing signed by both parties without further order of the Court; provided that any such modification, amendment or supplement does not materially change the terms of the Sale Agreement or modify the express terms of this Order.

24. Survival. Nothing contained in any subsequent order of this Court or any court of competent jurisdiction in these chapter 11 cases (or any order entered after any conversion of a chapter 11 case of the Debtors to a case under chapter 7 of the Bankruptcy Code)

or any chapter 11 plan confirmed in any Debtors' bankruptcy cases or any order confirming any such plan, or any order dismissing any cases of the Debtors shall nullify, alter, conflict with, or in any manner derogate from the provisions of this Order, and the provisions of this Order shall survive and remain in full force and effect. For the avoidance of doubt, if the Debtors' chapter 11 cases are converted to cases under chapter 7 of the Bankruptcy Code, the Order shall be binding on the chapter 7 trustee in such chapter 7 cases.

25. Failure to Specify. The failure to specifically include any particular provision of the Sale Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court, the Debtors and the Buyer that the Sale Agreement be authorized and approved in its entirety with such amendments thereto (subject to paragraph 23) as may be made by the parties in accordance with the Sale Transaction and the terms of the Sale Agreement.

26. Automatic Stay. The automatic stay pursuant to section 362 of the Bankruptcy Code is hereby lifted with respect to the Debtors to the extent necessary, without further order of this Court, to allow: (a) Buyer to give the Debtors any notice provided for in the Sale Agreement, and (b) Buyer to take any and all actions provided under or contemplated by the Sale Agreement in accordance with the terms and conditions thereof.

27. Appointment of Trustee. The provisions of the Sale Agreement and this Order may be specifically enforced in accordance with the Sale Agreement notwithstanding the appointment of any chapter 7 or chapter 11 trustee after the closing of the Sale Agreement.

28. Sureties Reservation of Rights. Certain commercial surety companies (collectively, the "Sureties" and each, individually, a "Surety") – including, Indemnity National Insurance Company, First Surety Corporation, Lexon Insurance Company – have issued

commercial surety bonds on behalf of the Sellers and their affiliates and certain non-Debtors (collectively, the “Existing Surety Bonds” and, each individually, an “Existing Surety Bond”). These Existing Surety Bonds were issued pursuant to certain existing indemnity agreements and/or related agreements by and between the Sureties, on the one hand, and the Sellers and their affiliates and certain non-Debtors (as applicable) on the other hand (collectively, the “Existing Indemnity Agreements” and, each, an “Existing Indemnity Agreement”).

29. If the closing of the Sale Agreement occurs prior to (i) the Buyer’s procurement of new operating permits, either replaced or transferred (the “Replacement Permits”) with respect to the Purchased Assets, (ii) the execution of new indemnity agreements by and between the Sureties, on the one hand, and the Buyer, on the other hand (the “Replacement Indemnity Agreements”), and (iii) the replacement of all Existing Surety Bonds with new surety bonds (collectively, the “Replacement Surety Bonds”), the Sellers will consult with the relevant Sureties with respect to entering into an agreement (an “Interim Agreement”), subject to regulatory authority approval, that would, among other provisions acceptable to the Sureties in their sole and absolute discretion, allow the Buyer to operate the Purchased Assets under the Sellers’ existing mining permits (collectively, the “Existing Permits”), Existing Indemnity Agreements and Existing Surety Bonds until the Buyer obtains Replacement Permits, Replacement Indemnity Agreements and Replacement Bonds. An Interim Agreement may require, among other provisions acceptable to the Sureties in their sole and absolute discretion, that the Buyer (a) assumes all obligations under the Existing Permits, Existing Indemnity Agreements and the Existing Surety Bonds for the mining and other activities the Buyer conducts during the term of the Interim Agreement and (b) indemnifies the Sureties from and



against any and all claims, liability, loss or default that occur during the term of the Interim Agreement.

30. With respect to each Surety, upon the (a) issuance of the Replacement Permits, (b) execution of the Replacement Indemnity Agreements and (c) termination and/or release of all Existing Surety Bonds, (d) satisfaction of all payment and performance obligations under the Existing Indemnity Agreements in accordance with paragraph 28, the Debtors shall have no further obligations to the Sureties under the Existing Indemnity Agreements on account of the Purchased Assets or any obligations related thereto; provided, however, that nothing in this paragraph or this Order shall be deemed to alter, limit or affect any rights or claims of the Sureties or any applicable state or regulatory authority, in respect of any asset, permit or other obligation not transferred or assumed by the Buyer.

31. Nothing in this Order, the Sale Agreement or any documents related to any of the foregoing shall be construed to authorize or permit the Debtors' assumption and assignment of any Existing Surety Bond or Existing Indemnity Agreement or to obligate any Surety to replace any Existing Surety Bond in connection with the Sale Agreement.

32. Nothing herein or in the Sale Agreement shall be deemed to provide a Surety's consent to the involuntary substitution of any principal under any Existing Surety Bond or Existing Indemnity Agreement.

33. Except as set forth in an Interim Agreement referenced in paragraph 29 above, the Buyer shall not be (a) liable for any Existing Surety Bonds and/or obligations arising under the Existing Indemnity Agreements to the extent they relate to any assets that are not transferred to the Buyer or (b) deemed a substitute principal under any Existing Surety Bond or an indemnitor under any Existing Indemnity Agreement.

34. For the avoidance of doubt, nothing in this Order, the Sale Agreement, or otherwise shall be deemed to: (a) alter, limit, expand, modify, release, waive or prejudice any rights, remedies and/or defenses of any Surety under any Existing Surety Bond relating to any assets, obligations or liabilities to be transferred to Buyer, including, without limitation, mining permits, surface and coal leases and mine-related facilities and other contractual obligations; (b) authorize or permit the assignment or assumption of any Existing Surety Bonds, any Existing Indemnity Agreements, including without limitation, any coal bond reclamation agreement, collateral agreement or other agreements of the Debtors or any non-Debtor with such Surety or Sureties, (collectively, the “Surety Agreements”); (c) alter, limit, expand, modify, prejudice, release or waive any rights of such Sureties under the Surety Agreements; (d) alter, limit, expand, modify, prejudice, waive or release any rights of such sureties in any and all collateral of such Surety or Sureties that secures any and all obligations of the Debtors or any non-Debtor under any Existing Surety Bonds or Existing Indemnity Agreements; or (e) alter, limit, expand, modify, prejudice, waive or release any rights of the Sureties in connection with any of the Debtors’ chapter 11 cases or any case under Title 11 of the United States Code.

35. Nothing in the Order, the Sale Agreement, or any other document or agreement executed in connection with or contemplated under the Sale Agreement, including, without limitation, any releases included therein, shall be deemed to alter, limit, modify or release any right, claim or interest of XL Insurance Company and XL Reinsurance Company (collectively, “XL”) under any of XL’s bonds, its indemnity agreements or in its collateral, including, without limitation, any rights, claims or interests against any non-Debtors, and all such rights and claims are expressly reserved and preserved in all respects.

36. United States of America. Notwithstanding any provisions in the Sale Motion, this Order, the Sale Agreement or any other documents approved in connection with this Order (collectively, the “Sale Documents”) to the contrary, nothing in this Order authorizes the sale (free and clear or otherwise), transfer, assumption and/or assignment of the Debtors’ interests in executory contracts, unexpired leases, rights-of-use and easements, and rights-of-way or other interests or agreements with the federal government (collectively, the “Federal Leases”), and no transfer and/or assignment of Federal Leases shall occur absent entry of a specific order entered pursuant to section 365 and subject to the consent of the United States as provided for in 11 U.S.C. § 365(c) and applicable non-bankruptcy laws. Any and all of the United States’ objections to the assumption, assignment and/or transfer of the Federal Leases pursuant to 11 U.S.C. § 365 are expressly preserved including, without limitation, with respect to any proposed cure of any defaults under the Federal Leases, the United States’ consent rights to any assignment or transfer of the Federal Leases and adequate assurance of future performance. Notwithstanding any provisions in the Sale Documents to the contrary, nothing in the Sale Documents shall affect the United States’ police and regulatory powers, and the United States’ (including any and all of its agencies) rights to offset or recoup any amounts due under, or relating to, claims or debts that the United States (including any and all of its agencies) may have or assert are expressly preserved. Notwithstanding anything to the contrary in the Sale Documents, this paragraph shall expressly supersede and control to the extent that any other provision in the Sale Documents conflicts with the terms of this paragraph.

37. Notwithstanding any other provision of this Order or any other Order of this Court, no sale, transfer or assignment of any rights and interests of the Debtor in any federal license or authorization issued by the Federal Communications Commission (“FCC”) shall take

place prior to the issuance of FCC regulatory approval for such sale, transfer or assignment pursuant to the Communications Act of 1934, as amended, and the rules and regulations promulgated thereunder. The FCC's rights and powers to take any action pursuant to its regulatory authority, including, but not limited to, imposing any regulatory conditions on such sales, transfers and assignments and setting any regulatory fines or forfeitures, are fully preserved, and nothing herein shall proscribe or constrain the FCC's exercise of such power or authority to the extent provided by law.

38. Nothing in this Order or the Sale Agreement releases, discharges, nullifies, precludes, or enjoins the enforcement of any environmental liability to a Governmental Unit or any police or regulatory liability (including but not limited to reclamation and mitigation and any associated long term protection requirements) to a Governmental Unit that any entity would be subject to as the owner or operator of the Purchased Assets after the closing. Nothing in this Order or the Sale Agreement authorizes the transfer or assignment to the Buyer of any governmental (a) license, (b) permit, (c) registration, (d) authorization, or (e) approval, or the discontinuation of any obligation thereunder, without compliance with all applicable legal requirements under non-bankruptcy law governing such transfers or assignments. Notwithstanding the foregoing sentence, nothing in this Order shall: (i) be interpreted to deem the Buyer as the successor to the Debtors under any successor liability doctrine with respect to any liabilities under environmental statutes or regulations for penalties for days of violation prior to the closing or for liabilities relating to off-site disposal of waste by the Debtors prior to the closing; (ii) create for any Governmental Unit any substantive right that does not already exist under law; or (iii) be deemed or construed to be an admission of liability by the Debtors.

39. Order Immediately Enforceable. Notwithstanding the provisions of Bankruptcy Rules 6004(h) and 6006(d) or any provisions of the Local Rules, this Order shall not be stayed for fourteen (14) days after its entry, and shall be effective immediately upon entry, and the Debtors and the Buyer are authorized to close the Sale Transaction immediately upon entry of this Order. Time is of the essence in closing the Sale Transaction referenced herein, and the Debtors and the Buyer intend to close the transaction as soon as practicable. This Order is a final order and the period in which an appeal must be filed shall commence upon the entry of this Order.

40. Conflicts. In the event of a direct conflict between the terms of this Order and the terms of (a) the Sale Agreement, or (b) any other order of this Court, the terms of this Order shall govern and control.

41. No Waiver. Except as otherwise expressly set forth herein, nothing in this Order shall modify or waive any closing conditions or termination rights in the Sale Agreement, and all such conditions and rights shall remain in full force and effect in accordance with their terms.

42. Time Periods. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

43. Nonseverability. The provisions of this Order are nonseverable and mutually dependent.

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Presented By:

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– and –

**SQUIRE PATTON BOGGS (US) LLP**

*/s/Stephen D. Lerner*

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Facsimile: 513.361.1201  
stephen.lerner@squirepb.com  
nava.hazan@squirepb.com  
travis.mcroberts@squirepb.com

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

**EXHIBIT A**

**Sale Agreement**

## GENERAL ASSIGNMENT AND ASSUMPTION AGREEMENT AND BILL OF SALE

This **GENERAL ASSIGNMENT AND ASSUMPTION AGREEMENT AND BILL OF SALE** (this “**Agreement**”), dated as of August 14, 2019 (the “**Effective Date**”), is made and entered into by and among Blackjewel L.L.C., a Delaware limited liability company (“**Blackjewel**”), Blackjewel Holdings L.L.C., a Delaware limited liability company (“**Holdings**”), and together with Blackjewel, Revelation Energy Holdings, LLC, a Delaware limited liability company, Revelation Management Corp., a Delaware corporation, Revelation Energy, LLC, a Kentucky limited liability company, Dominion Coal Corporation, a Virginia corporation, Harold Keene Coal Co. LLC, a Virginia limited liability company, Vansant Coal Corporation, a Virginia corporation, Lone Mountain Processing LLC, a Delaware limited liability company, Powell Mountain Energy, LLC, a Delaware limited liability company and Cumberland River Coal LLC, a Delaware limited liability company, each a “**Seller**” and collectively, “**Sellers**”) and Jewell Valley Mining LLC, a Delaware limited liability company and wholly owned subsidiary of Rhino Energy LLC (“**Buyer**”).

In consideration of the mutual representations, warranties, covenants and agreements contained herein, the parties hereto agree as follows:

1. This Agreement is subject in all respects to approval by the United States Bankruptcy Court for the Southern District of West Virginia (the “**Bankruptcy Court**”) by entry of an order in form and substance acceptable to Buyer.
2. Each Seller does hereby sell, transfer, assign, convey and deliver to Buyer all of the right, title and interest of such Seller in, to and under the Purchased Assets described on Exhibit A and incorporated herein by reference, free and clear of all liens, claims, interests and encumbrances, to the fullest extent permitted by the Bankruptcy Code and by the order of the Bankruptcy Court authorizing and approving the transactions described in this Agreement (“**Liens**”) (other than those Liens created by Buyer) and Excluded Liabilities described on Exhibit B and incorporated herein by reference, and Buyer hereby accepts the sale, transfer, assignment, conveyance and delivery of such Seller’s right, title and interest in all such Purchased Assets. This Agreement does not sell, transfer, assign, convey or deliver to Buyer any right, title or interest in, to or under the Excluded Assets described on Exhibit C and incorporated herein by reference.
3. Buyer does hereby assume from Sellers and agrees to timely pay, perform and discharge in accordance with their respective terms, the Assumed Liabilities described on Exhibit D attached hereto and incorporated herein by reference. Nothing in this Agreement shall be construed as the assumption by Buyer of any Excluded Liabilities.
4. Each Seller does hereby sell, transfer, assign, convey, and deliver to Buyer all of the right, title and interest of such Seller in, to and under the Assumed Leases described on Exhibit E, attached hereto and incorporated herein by reference, to which such Seller is a party, free and clear of all Liens (other than those Liens created by Buyer) and Excluded Liabilities, and Buyer hereby accepts such assignment, and Buyer does hereby assume and agree to pay, perform and discharge, as and when due, all of the duties and obligations of such Seller under all such Assumed Leases arising from and after the



Effective Date, except to the extent such duties and obligations constitute Excluded Liabilities.

5. Each Seller does hereby sell, transfer, assign, convey and deliver to Buyer all of the right, title and interest of such Seller in, to and under the Assumed Purchased Contracts described on Exhibit F, attached hereto and incorporated herein by reference, to which such Seller is a party, free and clear of all Liens (other than those Liens created by Buyer) and Excluded Liabilities, and Buyer hereby accepts such assignment, and Buyer does hereby assume and agree to pay, perform and discharge, as and when due, all of the duties and obligations of such Seller under all such Assumed Purchased Contracts arising from and after the Effective Date, except to the extent such duties and obligations constitute Excluded Liabilities.
6. In consideration for the Purchased Assets, Buyer will: (i) assume the Assumed Liabilities, (ii) pay Sellers the amount of \$850,000 in immediately available funds, and (iii) pay Sellers or their designees a cash royalty payment in the aggregate amount of \$250,000 on coal produced utilizing the assets listed on Exhibit A hereto, which royalty payment shall be (A) paid over a one-year period beginning on the Effective Date and (B) contained in such additional definitive documentation as may be mutually agreed upon by the parties.
7. Each Seller is an entity duly organized, validly existing and in good standing under the laws of its jurisdiction of formation and, subject to any limitations that may be imposed on such Sellers resulting from or relating to the Bankruptcy Case (as defined herein), has the requisite power and authority to own, lease and operate its properties and to carry on its business as now conducted.
8. Sellers own the Purchased Assets free and clear of all Liens (other than those Liens created by Buyer) and, as of the Effective Date, Buyer will be vested with good, marketable, and valid title to the Purchased Assets, free and clear of all Liens (other than those Liens created by Buyer) and Excluded Liabilities, to the fullest extent permissible under law, including Sections 105, 363, and 365 of the Bankruptcy Code and Rules 6004 and 6006 of the Federal Rules of Bankruptcy Procedure. Further, Sellers represent and warrant that they have taken all necessary actions and provided all necessary notice and service of process to all entities who claim to hold a Lien on, in, or to any of the Purchased Assets.
9. The Bankruptcy Court will retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes, which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transaction contemplated under this Agreement. Any and all proceedings related to the foregoing will be filed and maintained only in the Bankruptcy Court, and the parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court for such purposes; provided, however, that if the bankruptcy case captioned *in re Blackjewel, L.L.C., et al* (the “**Bankruptcy Case**”) has been closed pursuant to Section 350 of the Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.*, the parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the State Courts located in New York County, New York (or in the event (but only in the event) that such court does not have subject matter

jurisdiction over such proceeding, in the United States District Court for the Southern District of New York) and any appellate court from any thereof, for the resolution of any such claim or dispute. The parties hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the parties agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

10. In the event that, within twelve (12) months following the Effective Date, it is discovered and demonstrated to the satisfaction of the Buyer that certain assets, properties or rights, including fractional real property interests, owned, leased or subleased were conveyed to Buyer by Sellers but not previously used or held for use in connection with the Virginia Subdivision, then Buyer shall use its commercially reasonable efforts to assign, convey, lease or sublease, as applicable, such assets, properties, or rights to Seller (or its designee), in each case upon the reasonable request of Seller (or its designee), at no additional cost or expense to Seller (or its designee).
11. Each party to this Agreement waives any right to trial by jury in any action, matter or proceeding regarding this Agreement or any provision hereof.
12. This Agreement represents the entire understanding and agreement between the parties with respect to the subject matter hereof and supersedes all prior discussions and agreements between the parties with respect to the subject matter hereof. This Agreement can be amended, supplemented or changed, and any provision hereof can be waived, only by written instrument making specific reference to this Agreement signed by the party against whom enforcement of any such amendment, supplement, modification or waiver is sought.
13. This Agreement will be governed by and construed in accordance with federal bankruptcy law, to the extent applicable, and, where state law is implicated, the laws of the State of New York applicable to contracts made and performed in such State.
14. This Agreement may be executed in counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.
15. Each party hereto agrees, upon the reasonable request of any other party hereto (and at such other party's expense), to make, execute and deliver any and all documents or instruments of any kind or character, and to perform all such other actions, that may be reasonably necessary or proper to effectuate, confirm, perform or carry out the terms or provisions of this Agreement.
16. This Agreement may not be changed, modified, discharged or terminated orally or in any manner other than by an agreement in writing signed by the parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

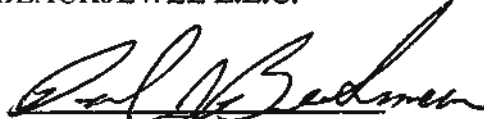
17. WITH RESPECT TO ALL MATTERS SOLD, ASSIGNED, TRANSFERRED AND CONVEYED PURSUANT HERETO, SUCH MATTERS ARE HEREBY SOLD, ASSIGNED, TRANSFERRED AND CONVEYED TO BUYER ON AN “AS IS”, “WHERE IS”, “WITH ALL FAULTS” BASIS, WITHOUT ANY REPRESENTATION, WARRANTY, GUARANTY, PROMISE, PROJECTION OR PREDICTION WHATSOEVER WITH RESPECT TO SUCH MATTERS, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW OR UNDER THE UNIFORM COMMERCIAL CODE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**SELLERS:**

**BLACKJEWEL L.L.C.**



Name: David J. Beckman  
Title: Interim Chief Executive Officer

**BLACKJEWEL HOLDINGS, L.L.C.**



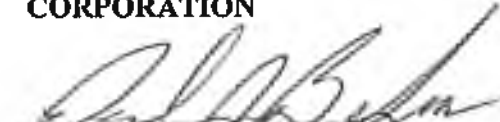
Name: David J. Beckman  
Title: Interim Chief Executive Officer

**REVELATION ENERGY HOLDINGS,  
LLC**



Name: David J. Beckman  
Title: Interim Chief Executive Officer

**REVELATION MANAGEMENT  
CORPORATION**



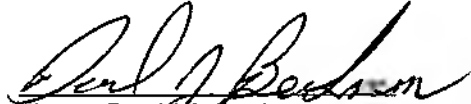
Name: David J. Beckman  
Title: Interim Chief Executive Officer

**REVELATION ENERGY, LLC**



Name: David J. Beckman  
Title: Interim Chief Executive Officer

**DOMINION COAL CORPORATION**



Name: David J. Beckman  
Title: Interim Chief Executive Officer

**HAROLD KEENE COAL CO. LLC**



Name: David J. Beckman  
Title: Interim Chief Executive Officer

**VANSANT COAL CORPORATION**



Name: David J. Beckman  
Title: Interim Chief Executive Officer

**LONE MOUNTAIN PROCESSING,  
LLC**



Name: David J. Beckman  
Title: Interim Chief Executive Officer

**POWELL MOUNTAIN ENERGY, LLC**



Name: David J. Beckman  
Title: Interim Chief Executive Officer

**CUMBERLAND RIVER COAL LLC**



Name: David J. Beckman

Title: Interim Chief Executive Officer

**BUYER:**

**Jewell Valley Mining LLC**

By: Richard A. Boone  
Name: Richard A. Boone  
Title: PRESIDENT & CEO

**EXHIBIT A**

**Purchased Assets**

DIV	MineAbbrv	Mine Location	Job / Job Name	Permit #	Bond Amount
VA	D15	Pioneer #1	D-15 - Pioneer #1	Permit #1201797	414,100
VA	D16	Mavrick	D-16 Mavrick - DOMINION #30	Permit #1202258	352,200
VA	D16	Mavrick	D-16 Mavrick - DOMINION #30 Shadow Permit	Permit #Y-4015-97	
VA	D17	Tiller #4	D-17 Tiller #4 - SURFACE MINE #1	Permit #1702261	1,791,400
VA	D18	Tiller #5	D-18 Tiller #5 - DOMINION MINE #7	Permit #1202259	325,000
VA	D18	Tiller #5	D-18 Tiller #5 - DOMINION MINE #7 Shadow Permit	Permit #Y-3032-12	
VA	D18	Dominion #7	D-18 - Dominion 7 Shadow Permit	Permit #Pending Transfer	-
VA	D20	Beehive	D-20 Beehive - DOMINION MINE #34	Permit #1202286	241,500
VA	P12	Flatrock	P-12 Flatrock - FLATROCK PLANT & REFUSE	Permit #1702276	2,058,000
VA	R251	#251	R251 - FLATROCK NORTHEAST	Permit #1102084	429,000
VA	T12	Raven Loadout	T-12 Raven Loadout - RAVEN DOCK	Permit #1302005	23,300

The Purchased Assets shall include, with respect to each specified Job / Job Name and Permit, all such leases, interests in real property, contracts, governmental permits and/or authorizations, improvements, equipment, parts and inventory, maps, records and employee information (to the extent permitted by law) necessary and desirable for the operation of such Job / Job Name and Permit as such operation would be operated by an experienced and prudent operator and which are held by Sellers with respect to such Job / Job Name and Permit. The Purchased Assets also include any real property, improvements, leases, equipment, parts and inventory located within the Virginia Subdivision property control whether or not contained within, on, or under the mine/permit listed above. For the avoidance of doubt, and except as otherwise agreed separately as between the Buyer and United Bank, the Buyer has agreed to carve out, and is not acquiring, any of the Sellers' assets pursuant to this Agreement upon which United Bank asserts a lien, interest or claim (the "United Collateral"), and United Bank's liens, interests, and claims against the Sellers or such Assets shall remain undisturbed by this Agreement. Buyer shall permit United Bank and/or the Sellers reasonable ingress, egress and regress to its real properties necessary for United Bank and/or the Sellers to retrieve such United Collateral.

The permit numbers listed herein are permit numbers that are either currently assigned or formerly assigned permit numbers, depending upon current permit transfer status to the applicable Seller. The permit numbers listed are for reference to a specific mine; Buyer and



Sellers agree that the actual permit number may vary due to a portion of the permits being in different phases of transfer at this time.

For the avoidance of doubt, Buyer is not acquiring any assets of the Sellers pursuant to this Agreement upon which Caterpillar Financial Services (“Caterpillar”) asserts a Lien, Claim or Interest (the “Caterpillar Collateral”). Buyer shall permit Caterpillar (subject to the requirements of the Bankruptcy Code) or the Sellers reasonable ingress, egress and regress to its real properties necessary to retrieve the Caterpillar Collateral.

For a period of twelve (12) months following the Effective Date, Sellers or their representatives agree to take commercially reasonable actions to designate Buyer as operator under the acquired permits, and to provide and execute documents and instruments to allow Buyer’s transfer and assumption of such permits as may be requested by Buyer. For a period of twelve (12) months following the Effective Date, Sellers or their representatives further agree to take commercially reasonable actions to cause the assignment and/or transfer to Buyer of each asset referenced herein, including all leases, real property interests, equipment, and contracts designated by Buyer.

**EXHIBIT B**

**Excluded Liabilities**

Any obligation pursuant to an instrument, whether identified as deed or otherwise, purporting to obligate any of the Debtors to pay any royalties such as overriding royalties, wheelage royalties, or the like, which instrument does not run with the land under applicable nonbankruptcy law.

Buyer will not assume any reclamation obligations associated with any permit not identified in Exhibit A to this Agreement or associated with any permit for which Buyer is not the highest and best bidder.

All liabilities not identified in Exhibit D to this Agreement as Assumed Liabilities are Excluded Liabilities.

**EXHIBIT C**

**Excluded Assets**

Any asset not identified as a Purchased Asset in Exhibit A to this Agreement, is an Excluded Asset.

**EXHIBIT D**

**Assumed Liabilities**

All reclamation obligations related to the permits identified in Exhibit A to this Agreement.

**EXHIBIT E**

**Assumed Leases**

Leases expressly designated by Buyer after the Effective Date, subject to agreement on cure amounts, minimum and production royalty amounts, and any additional terms with counterparties to such leases to Buyer's satisfaction.

**EXHIBIT F**

**Assumed Purchased Contracts**

Contracts expressly designated by Buyer after the Effective Date, subject to agreement on cure amounts and any additional terms with counterparties to such contracts to Buyer's satisfaction.

### **POWER OF ATTORNEY**

The undersigned, acting in his capacity as an officer of Blackjewel L.L.C., a Delaware limited liability company ("Blackjewel"), Blackjewel Holdings, L.L.C., a Delaware limited liability company ("Holdings"), and together with Blackjewel, Revelation Energy Holdings, LLC, a Delaware limited liability company; Revelation Management Corp., a Delaware corporation; Revelation Energy, LLC, a Kentucky limited liability company; Dominion Coal Corporation, a Virginia corporation; Harold Keene Coal Co. LLC, a Virginia limited liability company; Vansant Coal Corporation, a Virginia corporation; Lone Mountain Processing LLC, a Delaware limited liability company; Powell Mountain Energy, LLC, a Delaware limited liability company and Cumberland River Coal LLC, a Delaware limited liability company, each a "Seller" and collectively, "Sellers") hereby irrevocably constitutes, appoints and empowers Richard A. Boone as its true and lawful attorney-in-fact, in its name, place and stead and for its use and benefit, to execute, certify, acknowledge, file, record and swear to all instruments, agreements and documents necessary or advisable to carrying out the following:

(a) any instrument or document of any kind necessary to accomplish the transfer of certain vehicles and other equipment from the Sellers to Jewell Valley Mining LLC, a Delaware limited liability company ("Jewell Valley"), pursuant to that certain Asset Assumption and Bill of Sale, dated as of August 14, 2019, (the "Bill of Sale") by and among the Sellers and Jewell Valley.

The undersigned authorizes such attorney-in-fact to take any further action which such attorney-in-fact shall consider necessary or advisable in connection with any of the foregoing, hereby giving such attorney-in-fact full power and authority to do and perform each and every act or thing whatsoever necessary or advisable to be done in and about the foregoing as fully as such undersigned might or could do if personally present, and hereby ratifying and confirming all that such attorney-in-fact shall lawfully do or cause to be done by virtue hereof. The foregoing power of attorney shall survive the transfer by the undersigned of the whole or any part of its interest in accordance with the Bill of Sale.

[Remainder of this Page Intentionally Left Blank]

Blackjewel L.L.C.

By: [Signature]  
Name: David J. Beckman  
Title: Interim Chief Executive Officer

Harold Keene Coal Co. LLC

By: [Signature]  
Name: David J. Beckman  
Title: Interim Chief Executive Officer

Blackjewel Holdings, L.L.C.

By: [Signature]  
Name: David J. Beckman  
Title: Interim Chief Executive Officer

Vansant Coal Corporation

By: [Signature]  
Name: David J. Beckman  
Title: Interim Chief Executive Officer

Revelation Energy Holdings, LLC

By: [Signature]  
Name: David J. Beckman  
Title: Interim Chief Executive Officer

Lone Mountain Processing LLC

By: [Signature]  
Name: David J. Beckman  
Title: Interim Chief Executive Officer

Revelation Management Corp.

By: [Signature]  
Name: David J. Beckman  
Title: Interim Chief Executive Officer

Powell Mountain Energy, LLC

By: [Signature]  
Name: David J. Beckman  
Title: Interim Chief Executive Officer

Revelation Energy, LLC

By: [Signature]  
Name: David J. Beckman  
Title: Interim Chief Executive Officer

Cumberland River Coal LLC

By: [Signature]  
Name: David J. Beckman  
Title: Interim Chief Executive Officer

Dominion Coal Corporation

By: [Signature]  
Name: David J. Beckman  
Title: Interim Chief Executive Officer



STEPHEN D. LERNER, Attorney at Law  
Notary Public, State of Ohio  
My Commission Has No Expiration Date  
Section 147.03

STATE OF OHIO

COUNTY OF HAMILTON, to-wit:

I, Stephen D. Lerner, a Notary Public in and for the State and County aforesaid, do hereby certify that David J. Beckman of Blackjewel and Holdings, whose name as such is signed to the foregoing writing bearing date the 13<sup>th</sup> day of August, 2019, has this day, before me, in my said County, acknowledged the said writing.

Given under my hand and notarial seal this the 13<sup>th</sup> day of August, 2019.

My commission expires N/A

[Signature]  
NOTARY PUBLIC



## ROYALTY AGREEMENT

**THIS ROYALTY AGREEMENT** (this “**Agreement**”), dated as of August 14, 2019 (the “**Effective Date**”), is made and entered into by and among Blackjewel Holdings, L.L.C., a Delaware limited liability company (“**Holdings**”), as agent for each of the Sellers (defined below), Blackjewel L.L.C., a Delaware limited liability company (“**Blackjewel**”, and together with Holdings, Revelation Energy Holdings, LLC, a Delaware limited liability company, Revelation Management Corp., a Delaware corporation, Revelation Energy, LLC, a Kentucky limited liability company, Dominion Coal Corporation, a Virginia corporation, Harold Keene Coal Co. LLC, a Virginia limited liability company, Vansant Coal Corporation, a Virginia corporation, Lone Mountain Processing LLC, a Delaware limited liability company, Powell Mountain Energy, LLC, a Delaware limited liability company, and Cumberland River Coal LLC, a Delaware limited liability company, each a “**Seller**” and collectively, “**Sellers**”) and Jewell Valley Mining LLC, a Delaware limited liability company (“**Buyer**”).

### **RECITALS:**

- A. The Sellers are debtors in the Bankruptcy Case (defined below).
- B. As approved by and pursuant to a pleading styled, Order (I) Approving the Sale of Certain Assets to Rhino Energy, LLC Free and Clear of Liens, Claims, Encumbrances, and Other Interests, (II) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (III) Granting Related Relief (the “**Sale Order**”), in the Chapter 11 proceedings styled the bankruptcy case captioned *in re Blackjewel, L.L.C., et. al* (the “**Bankruptcy Case**”), such proceedings being jointly administered in the United States Bankruptcy Court for the Southern District of West Virginia, under Case No. 19-30289 (the “**Bankruptcy Court**”), Buyer has been approved to acquire from Sellers certain assets related to the mining, processing, preparation, selling and shipping of coal and related operations conducted with respect to the Sellers’ Virginia Subdivision Assets, as described on Exhibit A attached hereto (the “**Purchased Mines**”).
- C. This Agreement, pursuant to which Buyer desires to pay, and Holdings desires to receive, certain royalty payments arising from, related to, or in connection with, the operation of the Purchased Mines, is being entered into by Buyer and Holdings, as contemplated in the Sale Order.

**NOW, THEREFORE**, in consideration of the premises and the mutual benefit to be derived by the parties hereto, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

1. Buyer hereby creates, grants and conveys to Holdings a royalty interest in the Purchased Mines and agrees to pay Holdings a royalty payment arising from, related to, or in connection with, the operation of the Purchased Mines equal to the aggregate net present value amount of \$208,000 (the “**Royalty**”). This Agreement shall run with the land and be binding upon the successors and assigns of Buyer as owners of any of the land or real property interests with respect to any of the Purchased Mines, and shall inure to the benefit of Holdings and its

successors and assigns. This Agreement shall be freely assignable by Holdings without the consent of Buyer.

2. The Royalty shall be paid over a term of no more than one (1) year, in one annual fixed amount of \$250,000 (the “**Payment**”). The Payment shall be due no later than the first (1<sup>st</sup>) anniversary of the Effective Date. If the Payment is not paid when due shall accrue interest at an annual rate equal to the prime rate as published in the *Wall Street Journal*, plus 5%, compounded monthly, which shall be payable on demand.

3. Notwithstanding anything contained herein to the contrary, Buyer may prepay the Payment by calculating the then-net present value of the Payment using a discount rate of 20%.

4. This Agreement is in effect from the Effective Date and shall remain in effect until the Royalty is paid in full. Buyer shall at all times do or cause to be done all things necessary to maintain the Purchased Mines in good standing, including paying or causing to be paid all taxes owing in respect thereof, performing or causing to be performed all required assessment work thereon, paying or causing to be paid all claim, permit and license maintenance fees in respect thereof, and otherwise maintaining the Purchased Mines in compliance with all applicable laws. Buyer shall conduct its operations on the Purchased Mines in a professional and workmanlike manner in accordance with standard coal mining practices.

5. Buyer hereby represents and warrants to Holdings: (a) Buyer is duly formed, validly existing and in good standing and has all requisite power and authority to enter into and perform its obligations under this Agreement; (b) neither the execution, delivery or performance of this Agreement nor the consummation of the transactions contemplated hereby, do or will violate or be in conflict with any provision of Buyer’s certificate of formation, limited liability company agreement, or any agreement or instrument, to which Buyer is a party or is bound, or any judgment, decree, order, writ, injunction, statute, rule or regulation applicable to Buyer; (c) the execution, delivery and performance of this Agreement, and the transactions contemplated hereby, have been duly and validly authorized by all requisite action on the part of Buyer; and (d) Buyer is in compliance in all material respects with all material requirements of applicable law.

6. All payments of the Royalty hereunder shall be made to Holdings at the following address: 999 17th Street, Suite 700, Denver, Colorado 80202, or at such other address as may be communicated to Buyer by Holdings in writing. All payments of the Royalty hereunder shall be made in United States funds.

7. All prior negotiations and agreements by and among the parties hereto with respect to the subject matter hereof are superseded by this Agreement, and there are no representations, warranties, understandings or agreements with respect to the subject matter hereof other than those set forth in this Agreement. No terms or provisions of this Agreement shall be varied or modified and no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties hereto, unless reduced to writing and signed by an authorized officer of each party hereto.

**8.** Each party hereto shall have the right, at any time, to record, register, or otherwise give notice of this Agreement in appropriate governmental or regulatory offices in any jurisdiction relevant to the Purchased Mines, redacted where appropriate to protect the confidentiality of various provisions hereof, to the extent permissible by law. Buyer or Holdings, as the case may be, shall provide reasonable assistance to the other in effecting such recording, registering or notice.

**9.** Each party hereto agrees to execute, acknowledge and deliver such further instruments and to do all such other acts, as may be reasonably necessary or appropriate in order to carry out the purposes and intent of this Agreement. Buyer and Holdings will take such further action as the other may request, all at the sole cost and expense of the requesting party.

**10.** This Agreement may be executed in counterparts, including by means of facsimile or .pdf signatures, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**11.** No waiver by any party hereto of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

**12.** The parties hereto acknowledge and agree that they have been represented and advised by counsel in connection with the negotiation and preparation of this Agreement, and this Agreement shall be deemed to have been drafted jointly by the parties, notwithstanding that one party or the other may have performed a majority or all of the actual drafting hereof.

**13.** This Agreement shall be governed by and construed in accordance with the internal laws of the Commonwealth of Virginia without giving effect to any choice or conflict of law provision or rule (whether of the Commonwealth of Virginia or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the Commonwealth of Virginia. The parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the State Courts located in Buchanan County, Virginia (or in the event (but only in the event) that such court does not have subject matter jurisdiction over such proceeding, in the United States District Court for the Western District of Virginia) and any appellate court from any thereof, for the resolution of any disputes based on or arising out of this Agreement. The parties hereby waive, to the fullest extent permitted by applicable law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute.

***Remainder of Page Intentionally Left Blank; Signature Page Follows***

IN WITNESS WHEREOF, the parties hereto, through their respective duly authorized representatives, have caused this Agreement to be duly executed effective as of the Effective Date.

**HOLDINGS:**

**BLACKJEWEL HOLDINGS L.L.C.**

By: [Signature]  
Name: DAVID J. BECKMAN  
Title: INTERIM CEO



STEPHEN D. LERNER, Attorney at Law  
Notary Public, State of Ohio  
My Commission Has No Expiration Date  
Section 147.03

STATE OF OHIO )  
 ) ss  
COUNTY OF HAMILTON )

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of August, 2019 by David J. Beckman, Interim CEO of Blackjewel Holdings L.L.C., a(n) Delaware limited liability company, on behalf of the limited liability company.

Notary Public

**BUYER:**

**JEWELL VALLEY MINING LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of August, 2019 by \_\_\_\_\_, a(n) \_\_\_\_\_ limited liability company, on behalf of the limited liability company.

Notary Public

IN WITNESS WHEREOF, the parties hereto, through their respective duly authorized representatives, have caused this Agreement to be duly executed effective as of the Effective Date.

HOLDINGS:

**BLACKJEWEL HOLDINGS L.L.C.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
  ) ss  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of August, 2019 by \_\_\_\_\_, \_\_\_\_\_, a(n) \_\_\_\_\_ limited liability company, on behalf of the limited liability company.

\_\_\_\_\_  
Notary Public

BUYER:

**JEWELL VALLEY MINING LLC**

By: *Richard A. Boone*  
Name: *Richard A. Boone*  
Title: *PRESIDENT + CEO*

STATE OF Kentucky )  
  ) ss  
COUNTY OF Fayette )

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of August, 2019 by Richard A. Boone, \_\_\_\_\_, a(n) Delaware limited liability company, on behalf of the limited liability company.

ANNETTE NEUMANN  
NOTARY PUBLIC  
STATE AT LARGE - KENTUCKY  
ID # 613818  
MY COMMISSION EXPIRES JANUARY 6, 2023

*Annette Neumann*  
\_\_\_\_\_  
Notary Public

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**Exhibit A**

Purchased Mines

To be inserted upon final resolution of deeds.

**Notice Recipients**

District/Off: 0425-3  
Case: 3:19-bk-30289

User: ljpg  
Form ID: pdf001

Date Created: 8/26/2019  
Total: 2

**Recipients of Notice of Electronic Filing:**

at	Kyle F. Arendsen	kyle.arendsen@squirepb.com
at	Travis A. McRoberts	travis.mcroberts@squirepb.com

TOTAL: 2