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Attorneys for Debtors and Debtors in Possession

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:

Alpha Natural Resources, Inc., et al.,

Debtors.

Chapter 11

Case No. 15-33896 (KRH)

(Jointly Administered)

NOTICE OF MOTION AND RELATED HEARING

PLEASE TAKE NOTICE that, on February 28, 2016, the above-captioned debtors and debtors in possession (collectively, the "Debtors") filed the following motion (the "Motion") with the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division (the "Court"): *Third Omnibus Motion of the Debtors for an Order (I) Authorizing Them to (A) Reject Certain Unexpired Leases of Nonresidential Real Property and (B) Assume Certain Leases of Nonresidential Real Property, (II) Extending the Deadline to Assume or Reject Certain Unexpired Leases of Nonresidential Real Property and (III) Granting Related Relief.*

PLEASE TAKE FURTHER NOTICE that a copy of the Motion may be obtained at no charge at www.kccllc.net/alpharestructuring or for a fee at <https://ecf.vaeb.uscourts.gov>.

PLEASE TAKE FURTHER NOTICE that your rights may be affected. You should read the Motion carefully and discuss it with your attorney, if you have one in the chapter 11 cases. (If you do not have an attorney, you may wish to consult one).

PLEASE TAKE FURTHER NOTICE that, on August 5, 2015, the Court entered the *Order Establishing Certain Notice, Case Management and Administrative Procedures* (Docket No. 111) (the "Case Management Order"), which approved certain notice, case management and administrative procedures attached thereto as Schedule 1 (the "Case Management Procedures"). The Case Management Procedures, among other things, prescribe the manner in which

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Objections must be filed and served and set forth when certain hearings will be conducted. A copy of the Case Management Order may be obtained at no charge at www.kccllc.net/alpharestructuring or for a fee at <https://ecf.vaeb.uscourts.gov>.

PLEASE TAKE FURTHER NOTICE that if you do not want the Court to grant the relief requested in the Motion, or if you want the Court to consider your views on the Motion, then, by **April 5, 2016** (the "Response Deadline"), you or your attorney must:

- File with the Court, either electronically or at the address shown below, a written response to the Motion pursuant to Rule 9013-1(H) of the Local Rules of the United States Bankruptcy Court for the Eastern District of Virginia and the Case Management Procedures. If you mail your written response to the Court for filing, you must mail it early enough so the Court will **receive** it on or before the Response Deadline.

If a response is not properly and timely filed and served, the Court may deem any opposition waived, treat the Motion as conceded and enter an appropriate order granting the requested relief without further notice or hearing.

Clerk of the Court
United States Bankruptcy Court
701 East Broad Street
Suite 4000
Richmond, VA 23219

In accordance with the Case Management Procedures, you must also serve a copy of your written response on the parties to the Master Service List and the 2002 List and any Affected Entity (as such terms are defined in the Case Management Order) so that the response is received on or before the Response Deadline.

- Attend a hearing before the Honorable Kevin R. Huennekens, United States Bankruptcy Judge, at 10:00 a.m. (prevailing Eastern Time) on April 12, 2016, at the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division, 701 East Broad Street, Room 5000, Richmond, Virginia 23219.

PLEASE TAKE FURTHER NOTICE THAT you should consult the Case Management Procedures before filing any written response.

Dated: February 28, 2016
Richmond, Virginia

Respectfully submitted,

/s/ Henry P. (Toby) Long, III
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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:

Alpha Natural Resources, Inc., et al.,

Debtors.

Chapter 11

Case No. 15-33896 (KRH)

(Jointly Administered)

**THIRD OMNIBUS MOTION OF THE DEBTORS FOR AN ORDER
(I) AUTHORIZING THEM TO (A) REJECT CERTAIN UNEXPIRED LEASES
OF NONRESIDENTIAL REAL PROPERTY AND (B) ASSUME CERTAIN
UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY, (II) EXTENDING
THE DEADLINE TO ASSUME OR REJECT CERTAIN UNEXPIRED LEASES OF
NONRESIDENTIAL REAL PROPERTY AND (III) GRANTING RELATED RELIEF**

**PARTIES RECEIVING THIS OMNIBUS MOTION SHOULD LOCATE THEIR
NAMES AND THEIR LEASES ON, AS APPLICABLE, (A) THE INDIVIDUALIZED
NOTICE OF ASSUMPTION, NOTICE OF REJECTION OR NOTICE OF EXTENSION
ENCLOSED HEREWITH, OR (B) EXHIBIT 1, EXHIBIT 2 OR EXHIBIT 3 TO THE
PROPOSED ORDER ATTACHED HERETO AS EXHIBIT A, TO DETERMINE IF
THIS MOTION AFFECTS THEIR LEASE(S) OR THEIR RIGHTS THEREUNDER.**

Alpha Natural Resources, Inc. ("ANR") and certain of its direct and indirect subsidiaries, as debtors and debtors in possession (collectively, the "Debtors"), respectfully represent as follows:

Background

1. On August 3, 2015 (the "Petition Date"), the Debtors commenced their reorganization cases by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). By order of the Court (Docket No. 129), the Debtors' chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered. The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. A comprehensive description of the Debtors' businesses and operations, capital structure and the events leading to the commencement of these chapter 11 cases can be found in the amended declarations of (a) Kevin S. Crutchfield, Chief Executive Officer and Chairman of the Board of Directors of ANR (Docket No. 45), and (b) Philip J. Cavatoni, Executive Vice President and Chief Financial and Strategy Officer of ANR (Docket No. 46) (together, the "First Day Declarations"), each of which was filed on the Petition Date.

Jurisdiction

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

Relief Requested

4. Pursuant to section 365 of the Bankruptcy Code and Rule 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the Debtors hereby seek the

entry of an order, substantially in the form attached hereto as Exhibit A (the "Proposed Order"):

- (a) authorizing the rejection of certain of the Debtors' unexpired leases of nonresidential real property;
- (b) authorizing the assumption of certain of the Debtors' unexpired leases of nonresidential real property;
- (c) approving agreed extensions of the period within which the Debtors must assume or reject certain unexpired leases of nonresidential real property; and
- (d) granting related relief.

Facts Relevant to This Motion

The Unexpired Leases

5. As more fully described in the First Day Declarations, the Debtors' businesses are large and complex, with coal mining, gas production and other operations located throughout northern and central Appalachia and the Wyoming Powder River Basin.

In connection with these operations, the Debtors estimate that, as of the Petition Date, the Debtors were lessee, sublessee or party to more than 6,500 leases, subleases, licenses, rights of way and similar agreements, including approximately 1,400 coal and coal mining leases and approximately 800 oil and gas leases. Much of the value of the Debtors' businesses comes from leases providing them with the right to mine. The Debtors also are parties to leases of certain office locations, including their headquarters in Bristol, Virginia.

6. As of the date hereof, each of the unexpired leases of the Debtors set forth on the exhibits to the Proposed Order (collectively, the "Unexpired Leases") are (a) prepetition leases that remain subject to assumption or rejection pursuant to section 365 of the Bankruptcy Code and (b) are leases of nonresidential real property within the meaning of section 365 of the Bankruptcy Code.

The Deadline to Assume or Reject the Unexpired Leases

7. Section 365(d)(4) of the Bankruptcy Code provided the Debtors with 120 days from the Petition Date to decide whether to assume or reject the Unexpired Leases.¹ The statutory 120-day deadline (the "Lease Election Deadline") was set to expire on December 1, 2015. Given the size and scope of the Debtors' business and the complexity of their operations and financial affairs, the Debtors believed it was necessary to seek an extension of the Lease Election Deadline, as permitted by section 365(d)(4)(B) of the Bankruptcy Code.

8. Accordingly, on November 3, 2015, the Debtors filed the *Motion of the Debtors for an Order Extending Time to Assume or Reject Unexpired Leases of Nonresidential Real Property* (Docket No. 801) (the "Motion to Extend"). Pursuant to the Motion to Extend and consistent with section 365(d)(4)(B)(i) of the Bankruptcy Code,² the Debtors sought an extension of an additional 90 days to determine whether to assume or reject the Unexpired Leases.

9. By an order entered on November 24, 2014 (Docket No. 989) (the "Extension Order"), the Court approved the Motion to Extend, and extended the Lease Election Deadline through and including February 29, 2016. The Extension Order further provides that "[a]ny Unexpired Lease proposed to be assumed or rejected by a Timely Election Motion shall be assumed or rejected only pursuant to an order of the Court granting or denying

¹ Section 365(d)(4)(A) of the Bankruptcy Code provides:

Subject to subparagraph (B), an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of –

- (i) the date that is 120 days after the date of the order for relief; or
- (ii) the date of the entry of an order confirming a plan.

11 U.S.C. § 365(d)(4)(A).

² Section 365(d)(4)(B)(i) of the Bankruptcy Code provides that "[t]he court may extend the period determined under subparagraph (A), prior to the expiration of the 120-day period, for 90 days on the motion of the trustee or lessor for cause." 11 U.S.C. § 365(d)(4)(B)(i).

such Timely Election Motion, irrespective of whether the Court enters such an order prior to the expiration of the Assumption/Rejection Period." Extension Order, at ¶ 3. Accordingly, given that this Motion has been filed prior to the current Lease Election Deadline (and thus is a "Timely Election Motion" within the meaning of the Extension Order), the Court's entry of an order with respect to this Motion subsequent to the Lease Election Deadline will not cause any Unexpired Leases to be deemed automatically rejected by operation of section 365(d)(4) of the Bankruptcy Code.

10. Pursuant to section 365(d)(4) of the Bankruptcy Code, the Lease Election Deadline may be further extended by order of the Court with the consent of the applicable lessor.³ Absent such an extension, any Unexpired Lease not assumed or rejected prior to the current Lease Election Deadline will be deemed rejected as of March 1, 2016. As set forth in further detail below, a number of lessors have agreed in writing to extend the current Lease Election Deadline.

The Debtors' Efforts in Connection with the Unexpired Leases

11. Since the Petition Date, the Debtors have expended substantial effort to review the Unexpired Leases to determine which should be assumed or rejected by the Lease Election Deadline. This process has been undertaken in parallel with the Debtors' ongoing efforts to (a) develop and finalize a business plan, (b) formulate a chapter 11 plan and (c) pursue potential sale transactions beneficial to the Debtors' estates (collectively, the "Sale Process"), including as described in the *Debtors' Omnibus Motion for Entry of: (1) an Order Establishing Bidding and Sale Procedures for the Potential Sale of Certain Mining Properties and Related*

³ Section 365(d)(4)(B)(ii) provides that "[i]f the court grants an extension under clause (i) [of section 365(d)(4)(B) of the Bankruptcy Code], the court may grant a subsequent extension only upon prior written consent of the lessor in each instance." 11 U.S.C. § 365(d)(4)(B)(ii).

Assets; (II) One or More Orders Approving the Sale of Such Assets; (III) an Order Approving Settlements Related to Unencumbered Assets and the Pre-Petition Lenders' Diminution Claims; and (IV) an Order Approving Amendments to Certain Case Milestones in Connection with the DIP Credit Agreement (Docket No. 1464) (the "Sale Motion"), filed by the Debtors on February 8, 2016. As described therein, the Sale Motion anticipates a stalking horse credit bid (the "Stalking Horse Bid") for certain core assets from the Debtors' prepetition first lien lenders.

12. Among other things, the Debtors' review of the Unexpired Leases has involved: (a) reviewing the terms of each of the Unexpired Leases; (b) assessing the market value of the Unexpired Leases; (c) for coal leases, evaluating the quantities and market value of coal available for mining on the leased properties, and the potential costs of extracting such coal; (d) evaluating the potential economic impact of assumption or rejection; (e) evaluating the importance of the Unexpired Leases to the Debtors' business and the value of the Debtors' operations; (f) evaluating the importance of Unexpired Leases to the Sale Process, the Stalking Horse Bid and the chapter 11 plan; and (g) analyzing the Debtors' rights to terminate Unexpired Leases in the future in accordance with the terms of the underlying agreements. Where feasible, the Debtors have sought the applicable lessors' consents to extensions of the Lease Election Deadline to provide additional time to determine the best course of action for the treatment of the applicable Unexpired Leases. Through these efforts (and where no extension of the Lease Extension Deadline has been reached), the Debtors have determined, in their business judgment, which of the Unexpired Leases to assume or reject based on available information and the current circumstances of these cases.

The Assumed Leases

13. In connection with their review of the Unexpired Leases, the Debtors have determined to assume the Unexpired Leases (collectively, the "Assumed Leases") identified on

Exhibit 1 to the Proposed Order (the "Assumed Leases Schedule"), effective as of the date of entry of an order granting this Motion (the "Assumption/Rejection Date").⁴ In addition, pursuant to section 365(b)(1)(A) of the Bankruptcy Code, the Debtors propose to cure any and all defaults under the Assumed Leases through the cash payment to the applicable lessor of the amount identified for each assumed Unexpired Lease in the Assumed Leases Schedule (each, a "Cure Amount"), as required by section 365(b) of the Bankruptcy Code; provided that, in connection with any sale of assets, the buyer may assume the obligation to pay such Cure Amounts or to reimburse the Debtors for such payments.⁵ The Debtors further request that, upon payment of the Cure Amounts, the counterparties to the Assumed Leases shall be forever barred and enjoined from asserting against the Debtors or any assignee of the Assumed Leases any claims for cure costs under section 365 of the Bankruptcy Code other than the Cure Amounts set forth on the Assumed Leases Schedule or such other amount as may be agreed by the parties, consistent with the terms of any Order granting this Motion.

14. The Debtors have determined, in their business judgment based on the information currently available, that the assumption of the Assumed Leases is appropriate and

⁴ Each Assumed Lease includes any modifications, amendments, addenda or supplements thereto or restatements thereof as of the Assumption/Rejection Date. Notwithstanding the foregoing, the Assumed Leases shall not include any (a) payment agreements, (b) royalty agreements, including overriding royalty agreements, (c) assignment and assumption agreements, (d) purchase and other acquisition agreements, (e) sale agreements or (f) purchase option agreements, none of which are leases of nonresidential real property within the meaning of section 365(d)(4) of the Bankruptcy Code; provided that the Debtors reserve their rights to assume or reject any of the foregoing as may be permitted by section 365 of the Bankruptcy Code.

⁵ For each Assumed Lease, the Assumed Leases Schedule includes: (a) the name(s) of the lessor or lessors for the Assumed Lease; (b) the name(s) of the Debtor(s) that is/are party to the Assumed Lease; (c) the proposed Cure Amount to be paid in connection with the assumption of such lease; and (d) to the extent such information is reasonably available to the Debtors, (i) the location of the leased property, (ii) the date of the Assumed Lease and (iii) a brief description of the Assumed Lease. The Assumed Leases Schedule also prominently indicates that the effective date of assumption for all of the Assumed Leases set forth therein is the date of entry of any order granting this Motion. The terms of the Assumed Leases included in the Assumed Leases Schedule are provided for convenience only and are not intended to modify, or to represent the Debtors' interpretation of, the terms of any Assumed Lease.

represents the best available means of preserving and maximizing the value of their chapter 11 estates under the circumstances. The premises subject to the Assumed Leases currently are necessary to the Debtors' current business operations and are projected to be necessary to the Debtors' future operations and restructuring to the extent that the underlying properties are not sold. In particular, the Debtors believe that certain of the Assumed Leases are valuable in connection with the potential sale of certain of the Debtors' operations as part of the Sale Process, or otherwise may have realizable market value for the Debtors, including in connection with the Stalking Horse Bid. To preserve and maximize this potential market value, the Debtors expressly reserve the right to sell and assign each Assumed Lease at a future date, pursuant to sections 363 and 365(f) of the Bankruptcy Code.⁶

15. As the Debtors continue to review and evaluate the Unexpired Leases and as they move forward with the chapter 11 plan process and the Sale Process, proceeding in parallel with this Motion, the Debtors may determine, in their business judgment, that the assumption of certain Unexpired Leases currently identified on the Rejected Leases Schedule (as defined below) is appropriate and provides the maximum benefit to the Debtors' estates (any such Unexpired Lease, an "Additional Assumed Lease"). The Debtors reserve the right to amend the Assumed Leases Schedule to add Additional Assumed Leases, including by adding to the Assumed Leases Schedule any Unexpired Lease currently identified on the Rejected Leases

⁶ The Debtors believe that they are entitled to assign any of the Unexpired Leases to the extent that (a) such leases are validly assumed and (b) the requirements for assignment under section 365 of the Bankruptcy Code are satisfied. For example, among the Assumed Leases are certain Unexpired Leases between the Debtors and the United States government (including federal agencies, bureaus, regulatory bodies or other subdivisions of the United States) (collectively, the "Federal Leases"). The Debtors believe that (a) the Federal Leases are unexpired leases within the meaning of section 365 of the Bankruptcy Code and (b) under applicable law, the Debtors are entitled to assign any validly assumed Federal Leases, provided that the applicable requirements of section 365 of the Bankruptcy Code are otherwise satisfied with respect to any such assignment.

Schedule. The Debtors reserve the right to amend the Assumed Leases Schedule at any time up to and including March 29, 2016 (the "Lease Schedule Modification Deadline"), i.e., the date that is seven calendar days prior to the objection deadline applicable to this Motion (the "Objection Deadline") pursuant to the *Order Establishing Certain Notice, Case Management and Administrative Procedures* (Docket No. 111) (the "Case Management Order"). If the Debtors determine to assume any Additional Assumed Leases, the Debtors will file a notice on the docket indicating the treatment of the subject lease(s) and serve such notice upon the affected lessor(s).

16. The Debtors reserve the right to later request, by separate motion, authority to reject any Unexpired Lease that is assumed pursuant to an order granting this Motion, if, in their business judgment, the Debtors determine that rejection of the previously assumed Unexpired Lease is appropriate at such time. If the Debtors later reject any leases assumed hereunder, the resulting damages that may be asserted by lessors would be limited as set forth in section 503(b)(7) of the Bankruptcy Code⁷ and any other applicable law. The Debtors also reserve their rights to terminate any Assumed Lease in accordance with its terms.

17. In light of the voluminous nature of the Assumed Leases Schedule, to make the relevant information contained in the Assumed Leases Schedule readily accessible to the affected lease counterparties, and to reduce costs to the Debtors' estates, in lieu of serving the

⁷ Section 503(b)(7) of the Bankruptcy Code provides:

After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including ... with respect to a nonresidential real property lease previously assumed under section 365, and subsequently rejected, a sum equal to all monetary obligations due, excluding those arising from or relating to a failure to operate or a penalty provision, for the period of 2 years following the later of the rejection date or the date of actual turnover of the premises, without reduction or setoff for any reason whatsoever except for sums actually received or to be received from an entity other than the debtor, and the claim for remaining sums due for the balance of the term of the lease shall be a claim under section 502(b)(6).

11 U.S.C. § 503(b)(7).

Assumed Leases Schedule on each counterparty, the Debtors are serving each counterparty to an Assumed Lease listed on the Assumed Leases Schedule with (a) a copy of this Motion (excluding the Lease Schedules) and (b) an individualized Notice of (A) Potential Assumption of Unexpired Leases and (B) Cure Amounts, substantially in the form attached hereto as Exhibit B (the "Assumption Notice"), setting forth the information contained in the Assumed Leases Schedule with respect to such counterparty's Assumed Lease(s).

Cure Objections

18. To the extent any counterparty to an Assumed Lease or an Additional Assumed Lease files a timely objection to this Motion challenging the proposed Cure Amount (a "Cure Objection") and the parties are not able to reach a resolution prior to the hearing on this Motion (the "Scheduled Hearing Date"), the Debtors may proceed with a hearing on the assumption of such lease at the Scheduled Hearing Date and schedule the Cure Objection for hearing at the next scheduled omnibus hearing to be held in these cases or on such other omnibus hearing date as is mutually agreed upon by the parties. Any counterparty to an Assumed Lease or an Additional Assumed Lease that does not timely file a Cure Objection is deemed to consent to, and shall be bound by, the proposed Cure Amount as set forth in the Assumed Leases Schedule (or any amended Assumed Leases Schedule).⁸

The Rejected Leases

19. In connection with the Debtors' review of the Unexpired Leases, the Debtors have determined to reject the Unexpired Leases (collectively, the "Rejected Leases") identified on Exhibit 2 to the Proposed Order (the "Rejected Leases Schedule"), effective as of

⁸ The Sale Motion contemplates that the Debtors will send notices of proposed cure amounts to counterparties to executory contracts and unexpired leases potentially to be assumed and assigned as part of the sale transactions contemplated thereunder (any such notice, a "Cure Notice"). The Debtors request that each objection to a Cure Notice be deemed a Cure Objection, as such term is defined herein.

the Assumption/Rejection Date.⁹ The Debtors have determined that (a) the Rejected Leases are not necessary to their ongoing business operations or restructuring efforts and have no realizable market value and (b) the Debtors' burdens under each of the Rejected Leases exceed any current or potential benefits to the Debtors thereunder. The Debtors therefore believe, in their business judgment, that the Rejected Leases provide no economic benefit to the Debtors' estates, including through the Sale Process. The Debtors intend to surrender possession of property leased pursuant to the Rejected Leases to the respective lessors by the Assumption/Rejection Date, subject to ongoing access to comply with any remaining obligations under environmental laws and regulations, as described below.

20. As the Debtors continue to review and evaluate the Unexpired Leases and as they move forward with the Sale Process and negotiations related thereto, they may determine, in their business judgment, that the rejection of certain Unexpired Leases currently identified on the Assumed Leases Schedule is appropriate and provides the maximum benefit to the Debtors' estates (any such Unexpired Leases, the "Additional Rejected Leases"). The Debtors reserve the right to amend the Rejected Leases Schedule to add Additional Rejected Leases, including by

⁹ Each Rejected Lease includes any modifications, amendments, addenda or supplements thereto or restatements thereof as of the Assumption/Rejection Date. Notwithstanding the foregoing, the Rejected Leases shall not include any (a) payment agreements, (b) royalty agreements, including overriding royalty agreements, (c) assignment and assumption agreements, (d) purchase and other acquisition agreements, (e) sale agreements or (f) purchase option agreements, none of which are leases of nonresidential real property within the meaning of section 365(d)(4) of the Bankruptcy Code; provided that the Debtors reserve their rights to assume or reject any of the foregoing as may be permitted by section 365 of the Bankruptcy Code.

For each Rejected Lease, the Rejected Leases Schedule includes: (a) the name(s) of the lessor or lessors for the Rejected Lease; (b) the name(s) of the Debtor(s) that is/are party to the Rejected Lease; and (c) to the extent such information is reasonably available to the Debtors, (i) the location of the leased property, (ii) the date of the Rejected Lease and (iii) a brief description of the Rejected Lease. The Rejected Leases Schedule also prominently indicates that the effective date of rejection for all of the Rejected Leases set forth therein is the date of entry of any order granting this Motion. The terms of the Rejected Leases included in the Rejected Leases Schedule are provided for convenience only and are not intended to modify, or to represent the Debtors' interpretation of, the terms of any Rejected Lease.

adding to the Rejected Leases Schedule any Unexpired Lease currently identified on the Assumed Leases Schedule, at any time up to and including the Lease Schedule Modification Deadline. To the extent that the Debtors determine to reject any Additional Rejected Leases, the Debtors will (a) file a notice on the docket indicating the treatment of the subject lease(s), (b) serve such notice upon the affected lessor(s) and (c) surrender the leased premises to the respective lessor(s) prior to the Assumption/Rejection Date, unless otherwise agreed by the Debtors and the applicable lessor or as provided herein, subject to ongoing access to comply with any remaining obligations under environmental laws and regulations, as described below.

21. In light of the voluminous nature of the Rejected Leases Schedule, to make the relevant information contained in the Rejected Leases Schedule readily accessible to the affected lease counterparties, and to reduce costs to the Debtors' estates, in lieu of serving the Rejected Leases Schedule on each counterparty, the Debtors are serving each counterparty to a Rejected Lease listed on the Rejected Leases Schedule with (a) a copy of this Motion (excluding the Lease Schedules) and (b) an individualized Notice of Potential Rejection of Unexpired Leases, substantially in the form attached hereto as Exhibit C (the "Rejection Notice"), setting forth the information contained in the Rejected Leases Schedule with respect to such counterparty's Rejected Lease(s).

The Extended Deadline Leases

22. As set forth above, section 365(d)(4) of the Bankruptcy Code limits the Debtors to one initial 90-day extension of the statutory 120-day deadline to determine whether to assume or reject the Unexpired Leases. Under the Bankruptcy Code and the Extension Order, however, such deadline may be further extended by agreement between the Debtors and any applicable lessor. See 11 U.S.C. § 365(d)(4)(B)(ii) (allowing extensions beyond the 90-day extension period "upon prior written consent of the lessor in each instance"); Extension Order,

at ¶ 2 (providing that the deadline for the Debtors to assume or reject Unexpired Leases is extended through the current Lease Election Deadline "or such later date as may be agreed in writing between the Debtors and any applicable lessor").

23. To provide additional time to review certain of the Unexpired Leases and to engage in discussions with the applicable lessors, the Debtors successfully obtained the written consent of the lessors party to certain Unexpired Leases (collectively, the "Extended Deadline Leases") to a further extension of the Lease Election Deadline (in each case, the "Extended Deadline"). The Extended Deadline Leases are identified on Exhibit 3 to the Proposed Order (the "Extended Deadline Leases Schedule" and, collectively with the Assumed Leases Schedule and the Rejected Leases Schedule, the "Lease Schedules").¹⁰ The Extended Deadline Lease Schedule identifies for each Extended Deadline Lease the particular Extended Deadline agreed upon by the parties, which in most cases is April 29, 2016.

24. Prior to the expiration of the applicable Extended Deadline, the Debtors expect to file one or more motions to approve the assumption or rejection of each of the Extended Deadline Leases or to seek a further extension of the Extended Deadline. In addition, prior to the hearing on this Motion, the Debtors reserve the right to redesignate any Rejected Leases or Assumed Leases as Extended Deadline Leases if the Debtors and the applicable lessors reach an agreement establishing an extended Lease Election Deadline with respect to any Unexpired Leases currently listed on the Rejected Leases Schedule or the Assumed Leases

¹⁰ Among the Extended Deadline Leases listed on the Extended Deadline Leases Schedule is that certain Commercial Lease, dated as of October 22, 2010, between Johnson Sugar Hollow, LLC, as lessor, and Alpha Natural Resources Services, LLC, as lessee, related to the Debtors' headquarters in Bristol, Virginia (including any modifications, amendments, addenda or supplements thereto or restatements thereof, the "Headquarters Lease"). By agreement of the parties, notwithstanding anything in this Motion or the Proposed Order to the contrary, the Debtors shall not reject the Headquarters Lease prior to the expiration of the Extended Deadline set forth in the Extended Deadline Leases Schedule with respect thereto.

Schedule. Consistent with section 365(d)(4)(B)(ii) of the Bankruptcy Code and the Extension Order, the Debtors request that the Extended Deadline Leases set forth on the Extended Deadline Leases Schedule (and any Unexpired Leases that may be added thereto prior to the hearing on the Motion) not be deemed rejected pursuant to section 365(d)(4)(A) of the Bankruptcy Code.

25. To make the relevant information contained in the Extended Deadline Leases Schedule readily accessible to the affected lease counterparties, and to reduce costs to the Debtors' estates, in lieu of serving the Extended Deadline Leases Schedule on each counterparty, the Debtors are serving each counterparty to an Extended Deadline Lease listed on the Extended Deadline Leases Schedule with (a) a copy of this Motion (excluding the Lease Schedules) and (b) an individualized Notice of Extension of Deadline to Assume or Reject Unexpired Leases, substantially in the form attached hereto as Exhibit D (the "Extension Notice" and, collectively with the Assumption Notice and the Rejection Notice, the "Lease Notices"), setting forth the information contained in the Extended Deadline Leases Schedule with respect to such counterparty's Extended Deadline Lease(s).

Intercompany Leases

26. ANR and its subsidiary Debtors are parties to various intercompany leases of nonresidential real property (collectively, the "Intercompany Leases"). The Debtors have agreed to extend the deadline for assumption or rejection of the Intercompany Leases through the date of confirmation of any plan in these chapter 11 cases. Thus, the Debtors are not seeking to assume or reject any Intercompany Leases at this time.

Basis for Relief Requested

Assumption or Rejection of the Unexpired Leases as Requested Herein Is an Appropriate Exercise of the Debtors' Business Judgment and Should Be Authorized

27. Section 365(a) of the Bankruptcy Code provides that a debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease."

11 U.S.C. § 365(a). Courts routinely approve motions to assume, assume and assign, or reject executory contracts or unexpired leases upon a showing that the debtor's decision to take such action will benefit the debtor's estate and is an exercise of sound business judgment.

See NLRB v. Bildisco & Bildisco, 465 U.S. 513, 523 (1984) (stating that the traditional standard applied by courts to authorize the rejection of an executory contract is that of "business judgment"); Lubrizol Enters., Inc. v. Richmond Metal Finishers, Inc. (In re Richmond Metal Finishers, Inc.), 756 F.2d 1043, 1046-47 (4th Cir. 1985) (applying the "sound business judgment rule" when reviewing rejection of an executory contract); In re Circuit City Stores, Inc., No. 08-35653, 2010 WL 2425957, at *3 (Bankr. E.D. Va. June 9, 2010) ("Unlike many other sections of the Bankruptcy Code, § 365(a) of the Bankruptcy Code does not require a showing of 'cause' to support a [debtor's] decision to assume or reject an executory contract. Rather, the debtor's determination ... is governed by the 'business judgment' standard.") (citing Richmond Metal Finishers, 756 F.2d at 1046-47); In re Glover, No. 09-74787, 2010 WL 5239918, at *4 (Bankr. E.D. Va. Mar. 31, 2010) (with respect to the determination of whether a debtor in possession may assume or reject an executory contract or unexpired lease, "[t]he standard in this Circuit is whether the debtor in possession has exercised sound business judgment"); In re US Airways Grp., Inc., 287 B.R. 643, 645 (Bankr. E.D. Va. 2002) (same).

28. Courts generally will not second-guess a debtor's business judgment concerning the assumption or rejection of an executory contract or unexpired lease unless there is

a showing of bad faith or gross abuse of discretion. See Richmond Metal Finishers, 756 F.2d at 1047 ("[T]he rule as applied to a bankrupt's decision to reject an executory contract because of perceived business advantage requires that the decision be accepted by courts unless it is shown that the bankrupt's decision was one taken in bad faith or in gross abuse of the bankrupt's retained business discretion."). As this Court has explained, "[o]nce the Debtors articulate a valid business justification [supporting assumption or rejection under section 365 of the Bankruptcy Code], '[t]he business judgment rule becomes a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in honest belief that the action taken was in the best interests of the company.'" Circuit City Stores, 2010 WL 2425957, at *3 (quoting Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1992)) (certain internal quotation marks omitted). Thus, bankruptcy courts "should defer to the business judgment of the Debtors, unless 'the decision of the [Debtors] that rejection will be advantageous is so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice.'" Id. (quoting Richmond Metal Finishers, 756 F.2d at 1047) (modification in original); see also In re Auto Showcase of Laurel, LLC, No. 09-14731, 2011 WL 4054839, at *5 (Bankr. D. Md. Sept. 12, 2011) (same).

29. The "business judgment" test is not a strict standard; it merely requires a showing that either assumption or rejection of the executory contract or unexpired lease will benefit the debtor's estate. See U.S. Airways, 287 B.R. at 645 (stating that "'the bankrupt's decision [to reject] ... is to be accorded the deference mandated by the sound business judgment rule....' Where the burden [to the estate] outweighs the benefit, the trustee or debtor in possession is allowed to reject the lease so as not to saddle the bankruptcy estate with an

unwarranted expense.") (quoting Richmond Metal Finishers, 756 F.2d at 1046); Auto Showcase, 2011 WL 4054839, at *5 ("The standards that govern lease rejection are well established. A debtor may reject an executory contract if it is advantageous to the debtor to do so.") (citing Richmond Metal Finishers, 756 F.2d at 1046); NLRB v. Bildisco & Bildisco (In re Bildisco), 682 F.2d 72, 79 (3d Cir. 1982) (noting that the "usual test for rejection of an executory contract is simply whether rejection would benefit the estate"), aff'd, 465 U.S. 513 (1984).

30. Applying the business judgment standard to a debtor's proposed assumption or rejection is consistent with the broad purpose of section 365 of the Bankruptcy Code, which is "to permit [a debtor in possession] to pick and choose among the debtor's executory contracts and unexpired leases and to assume those which are beneficial to the estate and to reject those that are not beneficial." In re Convenience USA, Inc., No. 01-81478, 2002 WL 230772, at *7 (Bankr. M.D.N.C. Feb. 12, 2002); see also In re Fleming Cos., Inc., 499 F.3d 300, 304 (3d Cir. 2007) (stating that section 365 of the Bankruptcy Code "allows the trustee to maximize the value of the debtor's estate by assuming executory contracts ... that benefit the estate and rejecting those that do not") (citation and internal quotation marks omitted) (modification in original).

The Bankruptcy Code Contemplates Assignment After Assumption

31. As set forth above, the Debtors intend to assume each of the Assumed Leases now and may, in their discretion, assign them to a third party at a later time, pursuant to section 365(f) of the Bankruptcy Code. Courts have recognized the right of a debtor to assume a lease, while maintaining the right to later assign the lease under the provisions of section 365 of the Bankruptcy Code, which permits assignment notwithstanding an otherwise applicable nonassignability restriction. See In re Eastman Kodak Co., 495 B.R. 618, 622-24 (Bankr. S.D.N.Y. 2013) (granting motion to assign nonresidential real property lease

approximately one year after debtor assumed such lease notwithstanding anti-assignment provision in lease; holding that the Bankruptcy Code (a) contemplates that any assignment of an executory contract or unexpired lease can only occur after the assumption of such agreement and (b) does not require that nonresidential real property leases be assigned, if at all, prior to the applicable deadline established by section 365(d)(4) of the Bankruptcy Code); In re Bricker Sys., Inc., 44 B.R. 952, 955 (Bankr. E.D. Wis. 1984) (where franchisor argued that, upon the franchisee-debtor's assumption of a lease four months earlier, the debtor became bound by certain nonassignability provisions therein and could not later assign the lease, holding that "[t]here is absolutely nothing in [section 365 of the Bankruptcy Code] to indicate that Congress intended a substantially contemporaneous assignment or an assignment within a given time period following assumption.... Furthermore, there is nothing in the legislative history which supports a finding that an assumed contract may not be assigned at a later date;" further stating that "[i]f this court accepted [franchisor's] interpretation ..., a trustee/debtor could be forced to make a hasty and perhaps costly decision to immediately assign an assumed executory contract or lease on terms which fail to maximize its potential value to the bankruptcy estate"); see also In re Federated Dep't Stores, 135 B.R. 941, 945 (Bankr. S.D. Ohio 1991) (allowing a one-year lapse of time between assumption and assignment, pursuant to section 365(f) of the Bankruptcy Code; stating that Bricker Systems "lends clear support to the proposition that an assumed contract may be assigned at a later date").

The Debtors Have Determined That Rejection of the Rejected Leases Is Appropriate

32. The lease rejections requested herein are an appropriate exercise of the Debtors' business judgment and should be approved. Specifically, based on currently available information, it does not appear that the Rejected Leases are – or will be – necessary to the Debtors' ongoing business operations or restructuring efforts, nor do they appear to be

marketable for value in the Sale Process or otherwise. In many cases, the Rejected Leases relate to closed or idled facilities that are not economical to run under current market conditions.

In some cases, Rejected Leases relate to coal reserves that have been mined to the end of their productive lives. Certain other Rejected Leases are leases for office space for which the Debtors currently pay rents that are above market rates. Under these circumstances, the Debtors' ongoing obligations under the Rejected Leases would impose an undue and unnecessary burden on their chapter 11 estates. The Debtors, therefore, believe that maintaining the Rejected Leases would unnecessarily deplete the assets of the Debtors' estates to the detriment of their creditors.

33. Accordingly, in the sound exercise of their business judgment, the Debtors have determined that the rejection of the Rejected Leases, pursuant to section 365 of the Bankruptcy Code is in the best interests of their estates.

The Debtors Have Determined That Assumption of the Assumed Leases Is Appropriate

34. Likewise, the lease assumptions sought by this Motion are an appropriate exercise of the Debtors' business judgment. Specifically, with respect to each of the Assumed Leases, the Debtors have assessed the relevant markets and the Debtors' business operations in light of their business plan and restructuring efforts. The Debtors have determined that the assumption of many of the Assumed Leases is necessary to effect potential sales of the debtors' assets pursuant to the Sale Process, including the anticipated Stalking Horse Bid. To the extent not sold in the Sale Process, the Assumed Leases are expected to be needed to support the Debtors' restructuring. The Debtors thus have determined that the premises leased under the Assumed Leases – including certain Unexpired Leases of premises on which active mining operations remain ongoing – are necessary to the Debtors' current business operations, future plans and/or potential sales. Moreover, the immediate rejection of the Assumed Leases and

turnover of the underlying properties would be disruptive and costly, and would undermine the Debtors' efforts to sell assets through the Sale Process.

35. As part of the Sale Process, many of the Assumed Leases are expected to have realizable market value. To preserve and maximize this potential market value, the Debtors believe that assumption of the Assumed Leases is the most appropriate alternative given the information available and the current status of the Sale Process. To that end, the Debtors also are expressly reserving the right to sell and assign each Assumed Lease at a future date, pursuant to sections 363 and 365(f) of the Bankruptcy Code.

36. For all of these reasons, the Debtors believe that the assumption of the Assumed Leases is proper under the circumstances, satisfies the requirements of section 365(b)(1)(C) of the Bankruptcy Code and should be approved. The Debtors further submit that the payment of the Cure Amounts will fully satisfy the Debtors' obligations to cure outstanding defaults under the Assumed Leases, pursuant to section 365(b) of the Bankruptcy Code, and should be approved.

Request for Limited Access to Fulfill Reclamation and Other Environmental Compliance Obligations on Certain Premises Related to Rejected Leases

37. Under applicable law – including the Surface Mining Control and Reclamation Act, 30 U.S.C. §§ 1201, *et seq.* ("SMCRA"), its state analogues and related regulations – the Debtors may be required to undertake reclamation and other environmental compliance activities on properties formerly mined by the Debtors. Any failure by the Debtors to timely complete reclamation and other environmental compliance obligations could expose the Debtors to potentially severe penalties, including the loss of, or the inability to obtain or renew, state permits and licenses necessary to the Debtors' continuing operations.

See, e.g., W. Va. Code § 22-3-17 (providing for various penalties, including surface mining

permit revocation, that may be imposed against an operator that fails to satisfy reclamation obligations); Ky. Rev. Stat. § 350.085 (providing that surface mining permit applications and renewals may be denied if the operator is in violation of Kentucky's surface mining statutes or regulations, e.g., by failing to satisfy reclamation obligations).

38. The Debtors' efforts to fulfill reclamation and other environmental compliance obligations could be frustrated, however, if counterparties to any Rejected Leases were to deny the Debtors access to premises formerly leased by the Debtors for the purpose of undertaking reclamation and other environmental compliance activities.¹¹ Accordingly, the Debtors request that the Court grant the Debtors (including their employees, agents and contractors) reasonable access to the premises related to the Rejected Leases for the limited purpose of allowing the Debtors to fulfill any reclamation and other environmental compliance obligations.¹² The Debtors request that such access be granted, in each case, pursuant to the terms of customary and commercially reasonable access agreements – providing for, among other things, reasonable terms of access, hours of access and indemnity provisions – to be

¹¹ Some courts and administrative bodies have held that a mine operator retains its statutory obligation to perform reclamation irrespective of whether the operator maintains a contractual right to access the property following the cessation of mining operations thereon. See, e.g., Quality Ready Mix, Inc. v. Mamone, 520 N.E.2d 193, 197-98 (Ohio 1988) (holding that an operator's lack of contractual access rights to a property formerly mined by the operator did not relieve the operator of its state law obligation to reclaim the mine site; stating that "[t]he duty of [the operator] to reclaim the property ... is not a contractual one, but one arising from statute"); U.S. Dep't of the Interior, Office of Surface Mining Reclamation and Enforcement, Coalex State Inquiry Report – 100 (July 24, 1989), available at www.osmre.gov/resources/coalex.shtm (collecting administrative decisions of the U.S. Office of Surface Mining Reclamation and Enforcement holding that operators of surface mines retained the obligation to complete their reclamation obligations under SMCRA notwithstanding the operators' lack of contractual access rights to the respective properties).

¹² Should the Court not enter an order affirmatively granting the Debtors access to premises related to Rejected Leases for the purpose of fulfilling any reclamation and other environmental compliance obligations, alternatively, the Debtors request that the Court enter an order finding that, in the event that the Debtors are denied access to any premises related to the Rejected Leases for the purpose of undertaking reclamation and other environmental compliance activities, the Debtors shall not be in violation of SMCRA, the Clean Water Act, any federal and state regulations related to, and any state analogues of, such statutes or any other similar law or regulation requiring the Debtors to undertake reclamation and/or other environmental compliance activities on such premises.

negotiated by the Debtors and the applicable lease counterparties (any such agreement, an "Access Agreement"). The Debtors reserve their rights to request further relief from the Court in the event that the Debtors are unable to successfully negotiate an Access Agreement with a counterparty to a Rejected Lease (or a successor or assign of such a counterparty) and the Debtors are denied reasonable access to the relevant premises to perform any reclamation and/or other environmental compliance obligations.

39. The Debtors submit that granting the requested relief, which may be necessary to prevent regulatory disruptions of the Debtors' active mining operations at other locations and preserve the going concern value of the Debtors' business, is consistent with the fundamental purposes of chapter 11, *i.e.*, to promote the rehabilitation of the debtor and preserve estate value for the benefit of all stakeholders. See *In re Trump Entm't Resorts*, 810 F.3d 161, 174 (3d Cir. 2016) (stating that "[t]he policy behind Chapter 11 of the Bankruptcy Code is the ultimate rehabilitation of the debtor") (citation and internal quotation marks omitted); id. at 174 n.56 (stating that "the premise of a business reorganization is that a company's assets are worth more as a going concern than if sold for scrap") (citing H.R. Rep. No. 95-595, at 220 (1977), as reprinted in 1978 U.S.C.C.A.N. 5963, 6179).

40. The Debtors' request for access to perform reclamation and other environmental compliance obligations also is consistent with the anti-interference provision contained in West Virginia's Surface Coal Mining and Reclamation Act, which provides that "[i]t is unlawful for the owner of surface or mineral rights to interfere with the present operator in the discharge of the operator's obligations to the state for the reclamation of lands disturbed by the operator." W. Va. Code § 22-3-11(e). Finally, the Debtors believe that granting access to premises subject to Rejected Leases for the limited purpose of enabling the Debtors to fulfill any

reclamation and other environmental compliance obligations will not prejudice any party and, in fact, will benefit the affected lessors insofar as their property will be reclaimed and restored by the Debtors to the extent required by applicable law.

Request for Waiver of Bankruptcy Rule 6006(f)(6)

41. Bankruptcy Rule 6006(f)(6) provides, in relevant part, that "[a] motion to reject ... multiple ... unexpired leases that are not between the same parties shall ... be limited to no more than 100 ... unexpired leases." Fed. R. Bankr. P. 6006(f)(6). Courts, however, may waive the requirement of Bankruptcy Rule 6006(f)(6) for cause. See In re Old Carco LLC, 406 B.R. 180, 209-10 (Bankr. S.D.N.Y. 2009) (where debtors sought to reject nearly 800 agreements, waiving the requirement of Bankruptcy Rule 6006(f)(6); observing that "the 2007 Advisory Committee Note to Rule 6006 states that '[a]n omnibus motion to assume, assign, or reject multiple executory contracts and unexpired leases must comply with the procedural requirements set forth in subdivision (f) of the rule, *unless the court orders otherwise*;' further stating that, because notice of the proposed rejections was otherwise sufficient, "it would not have advanced the process by requiring the Debtors to file eight separate motions requesting the same relief") (emphasis added).

42. The Debtors submit that, as in Old Carco, cause exists here to waive the requirement of Bankruptcy Rule 6006(f)(6). The Debtors have complied with the applicable provisions of Bankruptcy Rule 6006(f) in all other respects,¹³ and (a) the individualized Lease Notices served on the counterparties to the Unexpired Leases and (b) the Lease Schedules

¹³ As required by the applicable subdivisions of Bankruptcy Rule 6006(f), this Motion (including the Lease Schedules attached hereto): (a) "state[s] in a conspicuous place that parties receiving the omnibus motion should locate their names and their ... leases listed in the motion;" (b) "list[s] parties alphabetically and identif[ies] the corresponding ... lease;" (c) "specif[ies] the terms, including the curing of defaults, for each requested assumption;" and (d) "[is] numbered consecutively with other omnibus motions to assume, assign, or reject executory contracts or unexpired leases." Fed. R. Bankr. P. 6006(f).

attached hereto, provide sufficient notice to all affected counterparties of the Debtors' intentions with respect to each of the Unexpired Leases. Moreover, the notice and objection procedures requested herein will ensure that sufficient notice is provided to lessors in the event that the Debtors modify the Lease Schedules prior to the Lease Schedule Modification Deadline. Under these circumstances, the Debtors believe that requiring the Debtors to file more than 50 separate motions to assume or reject Unexpired Leases may engender – rather than alleviate – confusion, and would burden the Debtors' estates with unnecessary expenses. Accordingly, the Debtors respectfully submit that cause exists to waive the requirement of Bankruptcy Rule 6006(f)(6).

Notice

43. In accordance with the Case Management Order, notice of this Motion has been given to (a) all parties on the Master Service List (as defined in the Case Management Order), (b) any party that has requested notice pursuant to Bankruptcy Rule 2002, (c) counterparties to the Unexpired Leases listed on the Lease Schedules and (d) the primary federal and state environmental regulatory agencies with jurisdiction over the real property underlying the Unexpired Leases. In light of the nature of the relief requested, the Debtors submit that no further notice is necessary.

No Prior Request

44. No prior request for the relief sought in this Motion has been made to this or any other Court in connection with these chapter 11 cases.

WHEREFORE, the Debtors respectfully request that the Court (a) enter an order substantially in the form attached hereto as Exhibit A granting the relief requested herein and (b) grant such other and further relief to the Debtors as the Court may deem proper.

Dated: February 28, 2016
Richmond, Virginia

Respectfully submitted,

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ATTORNEYS FOR DEBTORS AND
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Exhibit A

Proposed Order

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Attorneys for Debtors and Debtors in Possession

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:

Alpha Natural Resources, Inc., et al.,

Debtors.

Chapter 11

Case No. 15-33896 (KRH)

(Jointly Administered)

ORDER (I) AUTHORIZING THE DEBTORS TO (A) REJECT CERTAIN UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY AND (B) ASSUME CERTAIN LEASES OF NONRESIDENTIAL REAL PROPERTY, (II) EXTENDING THE DEADLINE TO ASSUME OR REJECT CERTAIN UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY AND (III) GRANTING RELATED RELIEF

This matter coming before the Court on the *Third Omnibus Motion of the Debtors for an Order (I) Authorizing Them to (A) Reject Certain Unexpired Leases of Nonresidential Real Property and (B) Assume Certain Leases of Nonresidential Real Property, (II) Extending the Deadline to Assume or Reject Certain Unexpired Leases of Nonresidential Real Property and (III) Granting Related Relief* (the "Motion"),¹ filed by the above-captioned debtors and debtors in possession (collectively, the "Debtors"); the Court having reviewed the Motion and having

¹ Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.

considered the statements of counsel with respect to the Motion at a hearing before the Court (the "Hearing"); the Court having found that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (c) notice of the Motion and the Hearing was sufficient under the circumstances, (d) service of the Lease Notices provided the counterparties to the Unexpired Leases with adequate notice of the potential assumption or rejection of, or the extension of the deadline to assume or reject, each Unexpired Lease, (e) the assumption or rejection of the Unexpired Leases as requested in the Motion and granted herein is an appropriate exercise of the Debtors' business judgment, (f) the proposed assumption of the Assumed Leases satisfies the requirements of section 365(b)(1)(C) of the Bankruptcy Code and (g) the Unexpired Leases are unexpired leases within the meaning of the Bankruptcy Code and such leases may be assigned by the Debtors following any assumption thereof pursuant to this Order, provided that the requirements of section 365 of the Bankruptcy Code relating to assignment are otherwise satisfied in connection with any such assignment; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. Subject to the reservations of rights set forth in the Motion and this Order, the Debtors are authorized to assume the Assumed Leases identified on Exhibit 1 hereto (the "Assumed Leases Schedule"), which is incorporated herein by reference,² and the Assumed

² Each Assumed Lease identified on the Assumed Leases Schedule includes any modifications, amendments, addenda or supplements thereto or restatements thereof. Notwithstanding the foregoing, the Assumed Leases shall not include any (a) payment agreements, (b) royalty agreements, including overriding royalty agreements, (c) assignment and assumption agreements, (d) purchase and other acquisition agreements, (e) sale agreements or (f) purchase option agreements, none of which are leases of nonresidential real

Leases (including any Additional Assumed Leases) are deemed assumed, pursuant to section 365 of the Bankruptcy Code, effective as of the date of entry of this Order.

3. The Debtors' right to assign any of the Assumed Leases, pursuant to section 365(f) of the Bankruptcy Code, is expressly reserved. Accordingly, the Debtors may assign any Assumed Lease in the future notwithstanding any provision of such Assumed Lease that prohibits, restricts or conditions the assignment of such Assumed Lease; provided that the conditions of section 365(f)(2)(B) of the Bankruptcy Code are satisfied.

4. The cure amount to be paid to cure all prepetition defaults under each Assumed Lease, pursuant to section 365(b) of the Bankruptcy Code, shall be the applicable Cure Amount set forth on the Assumed Leases Schedule attached hereto, or such other amount as may be agreed by the parties or otherwise ordered by the Court. The Debtors or any assignee of an Assumed Lease shall pay the applicable Cure Amounts set forth on the Assumed Leases Schedule attached hereto no later than 30 days following the entry of this Order.

5. The Cure Amount set forth in the Assumed Leases Schedule shall be binding upon the nondebtor parties to the Assumed Leases for all purposes in these chapter 11 cases and shall constitute a final determination of the total Cure Amounts required to be paid by the Debtors in connection with the assumption of the Assumed Leases as of the Objection Deadline (unless a portion of such costs are paid or satisfied in any manner, in which case the applicable Cure Amount shall be reduced); provided, for the avoidance of doubt, that any

(continued...)

property within the meaning of section 365(d)(4) of the Bankruptcy Code; provided that nothing in this Order shall be construed to impair the Debtors' rights to assume or reject any of the foregoing as may be permitted by section 365 of the Bankruptcy Code.

monetary defaults occurring after the Objection Deadline also must be cured in connection with any assumption of the Assumed Leases (the "Post-Deadline Defaults") and any disputes relating to Post-Deadline Defaults may be brought to this Court for adjudication. In addition, all nondebtor counterparties to Assumed Leases shall be forever (a) barred from objecting to the Cure Amounts and from asserting any additional cure or other amounts with respect to the Assumed Leases (other than any Post-Deadline Defaults), and the Debtors shall be entitled to rely solely upon the Cure Amounts set forth in the Assumed Leases Schedule; and (b) barred, estopped and permanently enjoined from asserting or claiming against the Debtors or their respective property that any additional amounts are due or other defaults exist (other than Post-Objection Defaults), that conditions to assignment must be satisfied under such Assumed Lease or that there is any objection or defense to the assumption of such Assumed Lease.

6. The Debtors are authorized to reject the Rejected Leases identified on the attached Exhibit 2 (the "Rejected Leases Schedule"), which is incorporated herein by reference,³ and the Rejected Leases are deemed rejected, pursuant to section 365 of the Bankruptcy Code, effective as of the date of entry of this Order.

7. Notwithstanding the rejection of any Rejected Lease pursuant to this Order, counterparties to the Rejected Leases (and their successors and assigns) shall not deny the Debtors (or their employees, agents or contractors) reasonable access to the premises related to any Rejected Lease for purposes of undertaking such reclamation and other environmental

³ Each Rejected Lease identified on the Rejected Leases Schedule includes any modifications, amendments, addenda or supplements thereto or restatements thereof. Notwithstanding the foregoing, the Rejected Leases shall not include any (a) payment agreements, (b) royalty agreements, including overriding royalty agreements, (c) assignment and assumption agreements, (d) purchase and other acquisition agreements, (e) sale agreements or (f) purchase option agreements, none of which are leases of nonresidential real property within the meaning of section 365(d)(4) of the Bankruptcy Code; provided that nothing in this Order shall be construed to impair the Debtors' rights to assume or reject any of the foregoing as may be permitted by section 365 of the Bankruptcy Code.

compliance activities as the Debtors are, or may in the future be, required to perform under applicable law; provided that such access shall be limited as set forth in any Access Agreement negotiated by the Debtors and the applicable counterparty (or such counterparty's successors or assigns). The Debtors shall have the right to request further relief from the Court if they are unable to successfully negotiate an Access Agreement with a counterparty to a Rejected Lease (or a successor or assign of such a counterparty) or otherwise are denied reasonable access to the relevant premises to perform any reclamation and other environmental compliance obligations.

8. In the event that the Debtors are denied access to any premises related to the Rejected Leases for the purpose of undertaking reclamation and other environmental compliance activities, the Debtors shall not be in violation of SMCRA, its related regulations, its state analogues, related state regulations or any other similar law or regulation requiring the Debtors to undertake reclamation activities on such premises.

9. Pursuant to the *Order Establishing Bar Dates for Filing Proofs of Claim and Approving Form and Manner of Notice Thereof* (Docket No. 1156) (the "Bar Date Order"), any lessor party to a Rejected Lease must file a proof of claim for any damages resulting from the rejection of the Rejected Lease (any such claim, a "Rejection Damages Claim") no later than 5:00 p.m., Eastern Time, on the date that is 30 days after the date hereof (the "Rejection Bar Date"). All such proofs of claims shall be filed by the Rejection Bar Date in accordance with the requirements of the Bar Date Order. If a lessor fails to timely and properly file a Rejection Damages Claim by the Rejection Bar Date, such party shall be forever barred, estopped and enjoined from asserting such Rejection Damages Claim against the Debtors or voting or receiving distributions under any chapter 11 plan in these cases on account of such Rejection Damages Claim.

10. Pursuant to section 365(d)(4) of the Bankruptcy Code, the Lease Election Deadline is hereby extended for each of the Extended Deadline Leases identified on Exhibit 3 through and including the date listed on Exhibit 3 hereto (the "Extended Deadline").

Any Extended Deadline Lease proposed to be assumed or rejected by the Debtors on or prior to the applicable Extended Deadline shall not be deemed rejected under section 365(d)(4) of the Bankruptcy Code irrespective of whether the Court has entered an order granting or denying such motion by the Extended Deadline, and such Extended Deadline Lease shall be assumed or rejected only upon an order of the Court approving such assumption or rejection.

11. Notwithstanding anything in this Order or the Motion to the contrary, the Debtors shall not reject the Headquarters Lease prior to the expiration of the Extended Deadline set forth in the Extended Deadline Leases Schedule with respect thereto.

12. The deadline for the assumption or rejection of Intercompany Leases is hereby extended through the date of confirmation of any plan in these chapter 11 cases.

13. Nothing herein shall be deemed to waive or prejudice the Debtors' rights to further extend the Lease Election Deadline applicable to any particular Extended Deadline Lease in accordance with section 365 of the Bankruptcy Code. For the avoidance of doubt, the Debtors are specifically authorized, without further order of the Court, to negotiate and enter into any agreement establishing or extending the Lease Extension Deadline applicable to any Unexpired Lease, and any such Unexpired Lease will not be subject to automatic rejection by operation of section 365(d)(4) of the Bankruptcy Code, regardless of when the applicable agreement establishing or extending the Lease Election Deadline is reached.

14. Within two business days after the entry of this Order, counsel to the Debtors shall serve a copy of this Order on each of the counterparties to the Unexpired Leases listed on the Lease Schedules attached hereto.

15. The requirements of Bankruptcy Rule 6006(f)(6) are hereby waived with respect to the Motion and the Lease Schedules.

16. The Debtors are authorized and empowered to take all actions necessary or appropriate to implement the relief granted in this Order.

17. This Court shall retain exclusive jurisdiction over any and all matters arising from or related to the implementation, interpretation or enforcement of this Order.

Dated: _____, 2016
Richmond, Virginia

UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

Respectfully submitted,

/s/ Henry P. (Toby) Long, III
Tyler P. Brown (VSB No. 28072)
J.R. Smith (VSB No. 41913)
Henry P. (Toby) Long, III (VSB No. 75134)
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and

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Counsel to the Debtors and Debtors in Possession

**CERTIFICATION OF ENDORSEMENT
UNDER LOCAL BANKRUPTCY RULE 9022-1(C)**

Pursuant to Local Bankruptcy Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Henry P. (Toby) Long, III

Exhibit B

Assumption Notice

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Attorneys for Debtors and Debtors in Possession

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:

Alpha Natural Resources, Inc., et al.,

Debtors.

Chapter 11

Case No. 15-33896 (KRH)

(Jointly Administered)

**NOTICE OF (A) POTENTIAL ASSUMPTION
OF UNEXPIRED LEASES AND (B) CURE AMOUNTS**

You are receiving this notice because you may be a counterparty to one or more unexpired leases of nonresidential real property with Alpha Natural Resources, Inc. or one or more of its affiliated debtors. Please read this notice carefully as your rights may be affected.

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. On February 28, 2016, Alpha Natural Resources, Inc. and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors"), filed the *Third Omnibus Motion of the Debtors for an Order (I) Authorizing Them to (A) Reject Certain Unexpired Leases of Nonresidential Real Property and (B) Assume Certain Unexpired Leases of Nonresidential Real Property, (II) Extending the Deadline to Assume or Reject Certain Unexpired Leases of Nonresidential Real Property and (III) Granting Related Relief* (the "Motion"), by which the Debtors seek the entry of an order (a) authorizing them to assume certain unexpired leases of nonresidential real property pursuant to section 365 of title 11 of the United States Code (the "Bankruptcy Code") and (b) granting certain additional relief.

2. The Debtors believe that you are a counterparty to, or otherwise have an economic interest in, the unexpired lease(s) listed on Exhibit A annexed hereto (each,

a "Potentially Assumed Lease"). Pursuant to the Motion, the Debtors seek to assume the Potentially Assumed Lease(s) listed on Exhibit A, pursuant to section 365 of the Bankruptcy Code. The Debtors have identified on the attached Exhibit A the amounts that the Debtors believe must be paid to cure all prepetition defaults under the Potentially Assumed Lease(s) as and to the extent required by section 365(b)(1) of the Bankruptcy Code (in each instance, the "Cure Amount").

3. A hearing on the Motion (the "Hearing") before the Honorable Kevin R. Huennekens, United States Bankruptcy Judge, is scheduled for 10:00 a.m. (Eastern Time) on April 12, 2016, at the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division, 701 East Broad Street, Room 5000, Richmond, Virginia 23219. The Hearing may be adjourned from time to time, without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Hearing or by the filing of a notice of adjournment with the Bankruptcy Court prior to the commencement of the Hearing (which may be included in a hearing agenda letter).

4. If you do not want the Court to grant the relief requested in the Motion, or if you want the Court to consider your views on the relief requested therein, including with respect to the proposed Cure Amount(s), then, by April 5, 2016, you or your attorney must file a response with the Bankruptcy Court in accordance with the instructions set forth in the *Notice of Motion and Related Hearing* enclosed herewith.

5. If you agree with the Cure Amount(s) indicated on Exhibit A, and otherwise do not object to the Debtors' assumption of your lease(s), you need not take any further action.

6. The Debtors' decision to assume the Potentially Assumed Lease(s) is subject to Bankruptcy Court approval. Accordingly, the Debtors shall be deemed to have assumed the Potentially Assumed Lease(s) only as of the date of, and effective and conditioned upon, the entry of an order granting the Motion.

Dated: February 28, 2016
Richmond, Virginia

Respectfully submitted,

/s/ Henry P. (Toby) Long, III

Tyler P. Brown (VSB No. 28072)
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Attorneys for Debtors and Debtors in Possession

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:

Alpha Natural Resources, Inc., et al.,

Debtors.

Chapter 11

Case No. 15-33896 (KRH)

(Jointly Administered)

NOTICE OF POTENTIAL REJECTION OF UNEXPIRED LEASES

You are receiving this notice because you may be a counterparty to one or more unexpired leases of nonresidential real property with Alpha Natural Resources, Inc. or one or more of its affiliated debtors. Please read this notice carefully as your rights may be affected.

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. On February 28, 2016, Alpha Natural Resources, Inc. and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors"), filed the *Third Omnibus Motion of the Debtors for an Order (I) Authorizing Them to (A) Reject Certain Unexpired Leases of Nonresidential Real Property and (B) Assume Certain Unexpired Leases of Nonresidential Real Property, (II) Extending the Deadline to Assume or Reject Certain Unexpired Leases of Nonresidential Real Property and (III) Granting Related Relief* (the "Motion"), by which the Debtors seek the entry of an order (a) authorizing them to reject certain unexpired leases of nonresidential real property pursuant to section 365 of title 11 of the United States Code (the "Bankruptcy Code") and (b) granting certain additional relief.
2. The Debtors believe that you are a counterparty to, or otherwise have an economic interest in, the unexpired lease(s) listed on Exhibit A annexed hereto (each, a "Potentially Rejected Lease"). Pursuant to the Motion, the Debtors seek to reject the

Potentially Rejected Lease(s) listed on Exhibit A, pursuant to section 365 of the Bankruptcy Code and subject to the terms and conditions described in the Motion.

3. A hearing on the Motion (the "Hearing") before the Honorable Kevin R. Huennekens, United States Bankruptcy Judge, is scheduled for 10:00 a.m. (Eastern Time) on April 12, 2016, at the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division, 701 East Broad Street, Room 5000, Richmond, Virginia 23219. The Hearing may be adjourned from time to time, without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Hearing or by the filing of a notice of adjournment with the Bankruptcy Court prior to the commencement of the Hearing (which may be included in a hearing agenda letter).

4. If you do not want the Court to grant the relief requested in the Motion, or if you want the Court to consider your views on the relief requested therein, then, by April 5, 2016, you or your attorney must file a response with the Bankruptcy Court in accordance with the instructions set forth in the *Notice of Motion and Related Hearing* enclosed herewith.

5. If you do not object to the Debtors' rejection of your lease(s) on the terms set forth in the Motion, you need not take any further action.

6. The Debtors' decision to reject the Potentially Rejected Lease(s) is subject to Bankruptcy Court approval. Accordingly, the Debtors shall be deemed to have rejected the Potentially Rejected Lease(s) only as of the date of, and effective and conditioned upon, the entry of an order granting the Motion.

Dated: February 28, 2016
Richmond, Virginia

Respectfully submitted,

/s/ Henry P. (Toby) Long, III
Tyler P. Brown (VSB No. 28072)
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ATTORNEYS FOR DEBTORS AND
DEBTORS IN POSSESSION

Exhibit A

Potentially Rejected Leases

Exhibit D

Extension Notice

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Attorneys for Debtors and Debtors in Possession

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:

Alpha Natural Resources, Inc., et al.,

Debtors.

Chapter 11

Case No. 15-33896 (KRH)

(Jointly Administered)

**NOTICE OF EXTENSION OF DEADLINE
TO ASSUME OR REJECT UNEXPIRED LEASES**

You are receiving this notice because you may be a counterparty to one or more unexpired leases of nonresidential real property with Alpha Natural Resources, Inc. or one or more of its affiliated debtors. Please read this notice carefully as your rights may be affected.

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. On February 28, 2016, Alpha Natural Resources, Inc. and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors"), filed the *Third Omnibus Motion of the Debtors for an Order (I) Authorizing Them to (A) Reject Certain Unexpired Leases of Nonresidential Real Property and (B) Assume Certain Unexpired Leases of Nonresidential Real Property, (II) Extending the Deadline to Assume or Reject Certain Unexpired Leases of Nonresidential Real Property and (III) Granting Related Relief* (the "Motion"), by which the Debtors seek the entry of an order (a) authorizing the Debtors to assume or reject certain unexpired leases of nonresidential real property pursuant to section 365 of title 11 of the United States Code (the "Bankruptcy Code"), (b) extending the deadline for the Debtors to assume or reject certain unexpired leases of nonresidential real property and (c) granting certain additional relief.

2. The Debtors believe that you are a counterparty to, or otherwise have an economic interest in, the unexpired lease(s) listed on Exhibit A annexed hereto (each, an "Extended Deadline Lease"). Pursuant to the Motion, the Debtors seek to extend the deadline by which the Debtors must assume or reject the Extended Deadline Lease(s) listed on Exhibit A, pursuant to section 365 of the Bankruptcy Code, and as agreed by the Debtors and the counterparty or counterparties to the Extended Deadline Lease(s).

3. A hearing on the Motion (the "Hearing") before the Honorable Kevin R. Huennekens, United States Bankruptcy Judge, is scheduled for 10:00 a.m. (Eastern Time) on April 12, 2016, at the United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division, 701 East Broad Street, Room 5000, Richmond, Virginia 23219. The Hearing may be adjourned from time to time, without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Hearing or by the filing of a notice of adjournment with the Bankruptcy Court prior to the commencement of the Hearing (which may be included in a hearing agenda letter).

4. If you do not want the Court to grant the relief requested in the Motion, or if you want the Court to consider your views on the relief requested therein, then, by April 5, 2016, you or your attorney must file a response with the Bankruptcy Court in accordance with the instructions set forth in the *Notice of Motion and Related Hearing* enclosed herewith.

5. If you do not object to the entry of an order authorizing an extension of the deadline for the Debtors to assume or reject the Extended Deadline Lease(s), as agreed by the parties and as set forth on the attached Exhibit A, you need not take any further action.

Dated: February 28, 2016
Richmond, Virginia

Respectfully submitted,

/s/ Henry P. (Toby) Long, III

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