

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

In re:

ARCH COAL, INC., *et al.*,

Debtors.<sup>1</sup>

**Chapter 11**

**Case No. 16-40120-705**

**(Jointly Administered)**

**Objection Deadline:**

June 2, 2016

**Hearing Date and Time:**

June 9, 2016, 10:00 a.m.  
(Prevailing Central Time)

**Hearing Location:**

Courtroom 7 South

**NOTICE OF THE DEBTORS' MOTION FOR ENTRY  
OF AN ORDER (i) APPROVING THE SALE AND  
TRANSFER OF CERTAIN ASSETS AND LIABILITIES FREE  
AND CLEAR OF ENCUMBRANCES AND (ii) GRANTING RELATED RELIEF**

PLEASE TAKE NOTICE that this motion is scheduled for hearing on June 9, 2016, at 10:00 a.m. (prevailing Central Time), in Bankruptcy Courtroom 7 South, in the Thomas F. Eagleton U.S. Courthouse, 111 South Tenth Street, St. Louis, Missouri 63102.

**WARNING: ANY RESPONSE OR OBJECTION TO THIS MOTION MUST BE FILED WITH THIS COURT BY JUNE 2, 2016. A COPY MUST BE PROMPTLY SERVED UPON THE UNDERSIGNED. FAILURE TO FILE A TIMELY RESPONSE MAY RESULT IN THE COURT GRANTING THE RELIEF REQUESTED PRIOR TO THE HEARING DATE.**

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<sup>1</sup> The Debtors are listed on Schedule 1 attached hereto. The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors' chapter 11 petitions.

**DEBTORS' MOTION FOR ENTRY OF  
AN ORDER (i) APPROVING THE SALE AND  
TRANSFER OF CERTAIN ASSETS AND LIABILITIES FREE  
AND CLEAR OF ENCUMBRANCES AND (ii) GRANTING RELATED RELIEF**

NOW COME Arch Coal, Inc. and its subsidiaries that are debtors and debtors in possession in these proceedings (collectively, the “**Debtors**”) and move this Court for entry of an order approving the sale and transfer of certain assets and liabilities free and clear of encumbrances and dismissing one Debtor’s chapter 11 case. In support of this motion (the “**Motion**”), the Debtors show the Court as follows:

**Relief Requested**

1. By this Motion, and pursuant to sections 105(a) and 363 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 1007, 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), the Debtors seek (i) entry of an order (the “**Proposed Order**”)<sup>2</sup> (a) authorizing entry into and performance under the Membership Interest Purchase Agreement by and among Debtor Arch Coal West, LLC (“**Arch Coal West**”) and LHR Infrastructure, LLC (“**LHR**”) and such Membership Interest Purchase Agreement dated as of May 26, 2016, as amended, supplemented and/or otherwise modified from time to time, the “**Millennium MIPA**”), attached hereto as Exhibit A and (b) approving the sale and transfer of Arch Coal West’s 38% membership interest (the “**Membership Interests**”) in Millennium Bulk Terminals-Longview, LLC (“**Millennium**”) to LHR in accordance with the Millennium MIPA (the “**Millennium Sale**”), (ii) approving entry into and performance under the Option Agreement (as defined below) and (iii) granting such other and further relief as is just and proper.

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<sup>2</sup> A copy of the Proposed Order will be provided to the Notice Parties (as defined below) and made available on the Debtors’ Case Information Website at <https://cases.primeclerk.com/archcoal>.

### **Jurisdiction**

2. This Court has jurisdiction over this Motion under 28 U.S.C. § 1334. Venue of this proceeding is proper pursuant to 28 U.S.C. § 1409. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

### **Background**

3. The Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code on January 11, 2016 (the “**Petition Date**”).

4. The Debtors have continued in possession of their property and have continued to operate and manage their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner.

5. The Debtors’ cases are being jointly administered pursuant to Bankruptcy Rule 1015(b) and the *Order Directing Joint Administration of Chapter 11 Cases* entered by this Court on January 13, 2016 in each of the Debtors’ cases.

6. The Court entered the *Order Establishing Certain Notice, Case Management and Administrative Procedures* on January 21, 2016 [ECF No. 155] (the “**Case Management Order**”).

7. Additional information about the Debtors’ businesses and the events leading up to the Petition Date can be found in the *Declaration of John T. Drexler, Senior Vice President and Chief Financial Officer of Arch Coal, Inc.*, filed on the Petition Date [ECF No. 3], which is incorporated herein by reference.

### **The Millennium Sale**

8. Millennium is a joint venture created to develop, own, lease and operate a bulk cargo port and terminal facility in Longview, Washington, on the Columbia River (the

“**Terminal**”). Debtor Arch Coal West currently owns a 38% membership interest in Millennium and LHR owns the other 62%. Millennium is currently in the process of obtaining approvals for and constructing the Terminal, which sits on land that is leased to Millennium by Northwest Alloys, Inc. (“**Northwest Alloys**” and such lease, the “**Ground Lease**”). Arch Coal West has obtained under the Debtors’ securitization facility (i) a letter of credit in the amount of \$10 million (the “**Northwest Alloys LC**”) to secure Millennium’s obligations under the Ground Lease and (ii) a letter of credit to secure Millennium’s obligations to the Army Corps of Engineers under a wetlands mitigation credit reservation and purchase agreement in the amount of \$756,580 (the “**Army Corps of Engineers LC**”, and, together with the Northwest Alloys LC, the “**Letters of Credit**”) at a cost of approximately \$250,000 per year.

9. Construction and development of the terminal is a long-term and capital-intensive project, and Arch Coal West is subject to periodic capital calls in respect of its Membership Interests in Millennium. Pursuant to Millennium’s organizational documents, if Millennium’s board of directors makes a capital call and one member defaults, the other member has the right to elect to pay any such defaulted capital contributions, with each such payment diluting the defaulting member’s membership interests in an amount (i) calculated based on the cumulative capital contributions of each member *plus* (ii) a 5% penalty (the “**5% Penalty**”). Given the anticipated frequency of Millennium capital calls, if Arch Coal West were to stop honoring capital calls, such dilution could eliminate Arch Coal West’s Membership Interests entirely within the span of eight weeks. Such dilution could result in a default under the Ground Lease that would permit Northwest Alloys to immediately draw the Northwest Alloys LC. On April 24, 2016, following extensive negotiations on the Millennium Sale, Arch Coal West and LHR entered into a letter agreement holding Arch Coal West’s capital contributions in abeyance,

providing for LHR to pay Arch Coal West's capital calls and waiving the 5% Penalty, in each case until June 30, 2016. Following further negotiations with LHR, LHR has agreed to purchase, and Arch Coal West has agreed to sell, such Membership Interests pursuant to the Millennium MIPA.<sup>3</sup> The Millennium MIPA was executed on May 26, 2016 and the Millennium Sale is expected to close on or before July 1, 2016, subject to entry of the Proposed Order and satisfaction of customary closing conditions.

10. The sale of the Membership Interests will relieve Arch Coal West of the obligation to make periodic capital contributions to Millennium. Additionally, Arch Coal, Inc. will enter into an agreement (the "**Option Agreement**") to receive an option to utilize up to 10% of the throughput capacity of the Terminal for a period of ten years, with the option to extend such period for two additional five-year terms, at a cost no less favorable than any other customer of the Terminal with a throughput contract with term business.<sup>4</sup> The Option Agreement does not become effective or enforceable unless and until the Court enters an order approving Arch Coal, Inc.'s entry into same.

11. As a condition to the Millennium Sale, Arch Coal West has agreed to continue to maintain the Letters of Credit through December 31, 2019, with Millennium reimbursing the fees and other costs of such maintenance up to a maximum of \$400,000 per year and agreeing to immediately reimburse any draws with respect to such Letters of Credit. As a further condition

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<sup>3</sup> This summary of the Millennium Sale in this motion is qualified in its entirety by reference to the Millennium MIPA. To the extent that there is any discrepancy between the terms contained in this Motion and those set forth in the Millennium MIPA, the terms of the Millennium MIPA shall control. Unless otherwise defined herein, capitalized terms used in this summary shall have the meanings ascribed to such terms in the Millennium MIPA.

<sup>4</sup> This summary of the Option Agreement in this motion is qualified in its entirety by reference to the Option Agreement. To the extent that there is any discrepancy between the terms contained in this Motion and those set forth in the Option Agreement, the terms of the Option Agreement shall control. Unless otherwise defined herein, capitalized terms used in this summary shall have the meanings ascribed to such terms in the Option Agreement.

to the Millennium Sale, Northwest Alloys has provided its consent to the sale and thus waive its right to immediately draw the Northwest Alloys LC.

12. The Debtors believe that the Millennium Sale will benefit their estates by enhancing their liquidity, reducing the risk that the Northwest Alloys LC will be drawn and preserving the Debtors' right to a portion of the Terminal's throughput services. The Debtors do not believe that they could achieve more favorable terms for the sale of the Membership Interests, especially given that under Millennium's operating agreement, a sale of the Millennium Interests to a third party would be subject to a right of first refusal of LHR. The Debtors have therefore concluded, in the exercise of their sound business judgment, that the Millennium Sale is fair and reasonable, and that the Millennium Sale is in the best interests of the Debtors' estates and creditors.

#### **Basis for Relief**

##### **The Millennium Sale Is Consistent with the Debtors' Business Judgment and Should Be Approved**

13. Section 363(b)(1) of the Bankruptcy Code empowers the Court to allow the debtor to "use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Although section 363 does not provide explicit guidance as to when a sale or disposition of property of the estate should be authorized, courts generally authorize debtors' decisions to use, sell or lease assets outside the ordinary course of business if such use, sale or lease is based upon a sound business purpose. *Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996); *see Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070-71 (2d Cir. 1983) (requiring a "good business reason" to approve a sale pursuant to section 363(b)); *see also Mich. Bureau of Workers' Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279, 285-86 (S.D.N.Y. 1987), *appeal dismissed* 838

F.2d 59 (2d Cir. 1988) (holding that a judge determining a section 363(b) application must find from the evidence presented before him or her a good business reason to grant such application); *In re Trilogy Dev. Co., LLC*, 2010 Bankr. LEXIS 5636, at \*3-4 (Bankr. W.D. Mo. 2010); *In re Channel One Comm., Inc.*, 117 B.R. 493, 496 (Bankr. E.D. Mo. 1990) (citing *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983)); *In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989) (noting that the standard for determining a section 363(b) motion is “a good business reason”).

14. Courts emphasize that the business judgment rule is not an onerous standard and may be satisfied “as long as the proposed action *appears* to enhance the debtor’s estate.” *Crystalin, LLC v. Selma Props. Inc. (In re Crystalin, LLC)*, 293 B.R. 455, 463-64 (B.A.P. 8th Cir. 2003) (quoting *Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 566 n.16 (8th Cir. 1997) (emphasis original, internal alterations and quotations omitted)); *see also In re AbitibiBowater, Inc.*, 418 B.R. 815, 831 (Bankr. D. Del. 2009) (the business judgment standard is “not a difficult standard to satisfy”). Under the business judgment rule, “management of a corporation’s affairs is placed in the hands of its board of directors and officers, and the Court should interfere with their decisions only if it is made clear that those decisions are, *inter alia*, clearly erroneous, made arbitrarily, are in breach of the officers’ and directors’ fiduciary duty to the corporation, are made on the basis of inadequate information or study, are made in bad faith, or are in violation of the Bankruptcy Code.” *In re Farmland Indus., Inc.*, 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003) (citing *In re United Artists Theatre Co.*, 315 F.3d 217, 233 (3d Cir. 2003), *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303 (5th Cir. 1985); *In re Defender Drug Stores, Inc.*, 145 B.R. 312, 317 (B.A.P. 9th Cir. 1992)); *see also In re Food Barn Stores, Inc.*, 107 F.3d 558, 567 n.16 (8th Cir. 1997) (“[w]here the [debtor’s]

request is not manifestly unreasonable or made in bad faith, the court should normally grant approval as long as the proposed action appears to enhance the debtor's estate" (citing *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985)); *In re Farmland Indus. Inc.*, 294 B.R. 903, 913 (Bankr. W.D. Mo. 2003) (approving the rejection of employment agreements and noting that "[u]nder the business judgment standard, the question is whether the [proposed action] is in the Debtors' best economic interests, based on the Debtors' best business judgment in those circumstances" (citations omitted)).

15. Here, the Debtors' decision to proceed with the Millennium Sale in accordance with the terms set out in the Millennium MIPA is based upon their sound business judgment. The Debtors do not believe that continued capital contributions can be justified given their current liquidity position and in light of the long-term nature of the Terminal project. Absent a sale or other transfer of the Membership Interests, Arch Coal West's ownership interests in Millennium would invariably be diluted to zero in a short period of time, which would strip Arch Coal West of its future right to throughput services and provide Northwest Alloys with the right to immediately draw the Northwest Alloys LC. The Millennium Sale prevents such an immediate draw and preserves the Debtors' rights to up to 10% of the Terminal's future throughput capacity. The Debtors submit that the Millennium MIPA represents the highest or otherwise best offer for the Membership Interests, and accordingly the Debtors believe that the Millennium Sale will result in the maximum benefit to the Debtors' estates and creditors.

16. Bankruptcy Rule 6004(f)(1) provides that "[a]ll sales not in the ordinary course of business may be by private sale or by public auction." By extension, a court should authorize a private sale, such as the Millennium Sale, as long as the decision to consummate such sale is made under sound business judgment. *See, e.g., In re Condere Corp.*, 228 B.R. 615, 629 (Bankr.



S.D. Miss. 1998) (approving the private sale of the debtor's tire company because the debtor showed sound business judgment). Courts frequently have allowed chapter 11 debtors to sell assets outside the ordinary course of business by private sale when the debtor demonstrates that the sale is permissible pursuant to section 363(b) of the Bankruptcy Code. *See, e.g., In re Peabody Energy Corp.*, Case No. 16-42529 (Bankr. E.D. Mo. May 17, 2016); *In re Arch Coal, Inc.*, Case No. 16-40120 (Bankr. E.D. Mo. Feb. 24, 2016); *In re Chemtura Corp.*, Case No. 09-11233 (Bankr. S.D.N.Y. Jul. 23, 2010); *In re Lehman Brothers Holdings, Inc.*, Case No. 08-13555 (Bankr. S.D.N.Y. Sept. 20, 2008); *In re Loral Space & Commc'ns Ltd., et al.*, Case No. 03-41710 (RDD) (Bankr. S.D.N.Y. Sept. 30, 2005); *In re International Wire Grp., Inc., et al.*, Case No. 04-11991 (BRL) (Bankr. S.D.N.Y. June 10, 2004); *Palermo v. Pritam Realty, Inc. (In re Pritam Realty, Inc.)*, 233 B.R. 619 (D. P.R. 1999) (upholding bankruptcy court approval of private sale); *In re Wieboldt Stores, Inc.*, 92 B.R. 309 (N.D. Ill. 1988) (affirming right of chapter 11 debtor to transfer assets by private sale). In the unique circumstance of this minority interest in a closely held joint venture, a private sale to LHR presents the best means of realizing the value of the Membership Interests.

The Millennium Sale Satisfies the Requirements of Section 363(f) of the Bankruptcy Code for a Sale Free and Clear of Encumbrances

17. The Debtors request that the Court authorize the sale of the Membership Interests free and clear of any and all liens, claims, interests and encumbrances (collectively, “**Encumbrances**”),<sup>5</sup> with all such Encumbrances to attach only to the proceeds of the Millennium Sale with the same priority, validity, perfection, enforceability and effect as they now have in or against the Membership Interests. In the event that any Encumbrances are

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<sup>5</sup> For the avoidance of doubt, the Membership Interests consist solely of Arch Coal West's Membership Interests in Millennium and not the assets held by Millennium. Thus, Arch Coal West is seeking authority to sell such Membership Interests, *not* the underlying assets, free and clear of any and all Encumbrances.

successfully asserted against any of the Membership Interests, for the reasons set forth herein, the Debtors assert that the sale of the Membership Interests may be approved free and clear of any such Encumbrances.

18. Under section 363(f) of the Bankruptcy Code, a debtor in possession may sell property free and clear of any lien, claim or interest in such property of an entity other than the estate if, among other things:

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

11 U.S.C. § 363(f).

19. Because section 363(f) of the Bankruptcy Code is drafted in the disjunctive, satisfaction of any one of its five requirements will suffice to permit the sale of the Membership Interests “free and clear” of such Encumbrances. *See, e.g., In re James*, 203 B.R. 449, 453 (Bankr. W.D. Mo. 1997) (“The five conditions enumerated in section 363(f) are disjunctive and, as such, a sale thereunder can be authorized if the trustee can prove the existence of any one of the five conditions.”).

20. The Debtors submit that section 363(f) permits the sale of the Membership Interests free and clear of all Encumbrances. Each Encumbrance satisfies at least one, if not more, of the tests of section 363(f) of the Bankruptcy Code, and any such Encumbrance will be

adequately protected by attachment to the net proceeds of the Millennium Sale, subject to any claims and defenses that the Debtors may possess with respect thereto.

LHR Should Be Entitled to the Protections of Section 363(m) of the Bankruptcy Code

21. Section 363(m) of the Bankruptcy Code provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal. 11 U.S.C. § 363(m).

22. While the Bankruptcy Code does not define “good faith,” courts in the Eighth Circuit have held that “[l]ack of good faith is shown by misconduct surrounding the sale. Typically, the requisite misconduct necessary to establish a lack of good faith involves ‘fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.’” *In re Burgess*, 246 B.R. 352, 255–56 (B.A.P. 8th Cir. 2000) (quoting *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978) (interpreting Bankruptcy Rule 805, the precursor of section 363(m)). *See also In re Agriprocessors, Inc.*, 465 B.R. 822 (Bankr. N.D. Iowa 2012) (citing *In re Burgess*).

23. Here, the Millennium Sale was the result of good faith and arms’-length negotiations between Arch Coal West and LHR over the course of several weeks. The Debtors therefore request that the Court make a finding that, upon the closing of the Millennium Sale, LHR will have purchased the Membership Interests in good faith within the meaning of section 363(m) of the Bankruptcy Code.

**Waiver of Stay Under Bankruptcy Rule 6004(h)**

24. The Debtors also request that, to the extent applicable to the relief requested in this Motion, the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until

the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtors seek in this Motion is necessary for the Debtors to operate their businesses without interruption and to preserve value for their estates. Accordingly, the Debtors respectfully request that the Court waive the 14-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

### **Notice**

25. Consistent with the Case Management Order, the Debtors will serve notice of this Motion on (a) the Core Parties, (b) any Non-ECF Parties (as those terms are defined in the Case Management Order), (c) LHR, (d) Millennium and (e) Northwest Alloys (collectively, the “**Notice Parties**”). All parties who have requested electronic notice of filings in these cases through the Court’s ECF system will automatically receive notice of this motion through the ECF system no later than the day after its filing with the Court. A copy of this Motion and any order approving it will also be made available on the Debtors’ Case Information Website (located at <https://cases.primeclerk.com/archcoal>). A Copy of the Proposed Order will be made available on the Debtors’ Case Information Website. The Proposed Order may be modified or withdrawn at any time without further notice. If any significant modifications are made to the Proposed Order, an amended Proposed Order will be made available on the Debtors’ Case Information Website, and no further notice will be provided. In light of the relief requested, the Debtors submit that no further notice is necessary.

**No Prior Request**

26. The Debtors have not previously sought the relief requested herein from this or any other court.

WHEREFORE, the Debtors respectfully request that this Court:

- (a) authorize the Debtors to enter into and perform under the Millennium MIPA;
- (b) approve the Millennium Sale and the transfer of the Membership Interests free and clear of Encumbrances to LHR;
- (c) approve entry into and performance under the Option Agreement; and
- (d) grant the Debtors such other and further relief as is just and proper.

Dated: May 26, 2016  
New York, New York

Respectfully submitted,  
DAVIS POLK & WARDWELL LLP

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**SCHEDULE 1**  
**Debtor Entities**

1.	ACI Terminal, LLC	37.	ICG Eastern, LLC
2.	Allegheny Land Company	38.	ICG Eastern Land, LLC
3.	Apogee Holdco, Inc.	39.	ICG Illinois, LLC
4.	Arch Coal, Inc.	40.	ICG Natural Resources, LLC
5.	Arch Coal Sales Company, Inc.	41.	ICG Tygart Valley, LLC
6.	Arch Coal West, LLC	42.	International Coal Group, Inc.
7.	Arch Development, LLC	43.	Jacobs Ranch Coal LLC
8.	Arch Energy Resources, LLC	44.	Jacobs Ranch Holdings I LLC
9.	Arch Reclamation Services, Inc.	45.	Jacobs Ranch Holdings II LLC
10.	Arch Western Acquisition Corporation	46.	Juliana Mining Company, Inc.
11.	Arch Western Acquisition, LLC	47.	King Knob Coal Co., Inc.
12.	Arch Western Bituminous Group, LLC	48.	Lone Mountain Processing, Inc.
13.	Arch Western Finance LLC	49.	Marine Coal Sales Company
14.	Arch Western Resources, LLC	50.	Melrose Coal Company, Inc.
15.	Arch of Wyoming, LLC	51.	Mingo Logan Coal Company
16.	Ark Land Company	52.	Mountain Coal Company, L.L.C.
17.	Ark Land KH, Inc.	53.	Mountain Gem Land, Inc.
18.	Ark Land LT, Inc.	54.	Mountain Mining, Inc.
19.	Ark Land WR, Inc.	55.	Mountaineer Land Company
20.	Ashland Terminal, Inc.	56.	Otter Creek Coal, LLC
21.	Bronco Mining Company, Inc.	57.	Patriot Mining Company, Inc.
22.	Catenary Coal Holdings, Inc.	58.	P.C. Holding, Inc.
23.	Catenary HoldCo, Inc.	59.	Powell Mountain Energy, LLC
24.	Coal-Mac, Inc.	60.	Prairie Coal Company, LLC
25.	CoalLHR Development LLC	61.	Prairie Holdings, Inc.
26.	Cumberland River Coal Company	62.	Saddleback Hills Coal Company
27.	Energy Development Co.	63.	Shelby Run Mining Company, LLC
28.	Hawthorne Coal Company, Inc.	64.	Simba Group, Inc.
29.	Hobet Holdco, Inc.	65.	Thunder Basin Coal Company, L.L.C.
30.	Hunter Ridge, Inc.	66.	Triton Coal Company, L.L.C.
31.	Hunter Ridge Coal Company	67.	Upshur Property, Inc.
32.	Hunter Ridge Holdings, Inc.	68.	Vindex Energy Corporation
33.	ICG, Inc.	69.	Western Energy Resources, Inc.
34.	ICG, LLC	70.	White Wolf Energy, Inc.
35.	ICG Beckley, LLC	71.	Wolf Run Mining Company
36.	ICG East Kentucky, LLC		

**Exhibit A**



**MEMBERSHIP INTEREST PURCHASE AGREEMENT**

**BY AND BETWEEN**

**ARCH COAL WEST, LLC**

**AND**

**LHR INFRASTRUCTURE, LLC**

**DATED AS OF MAY 26, 2016**

## MEMBERSHIP INTEREST PURCHASE AGREEMENT

THIS MEMBERSHIP INTEREST PURCHASE AGREEMENT (this “**Agreement**”) is made as of May 26, 2016 by and between Arch Coal West, LLC, a Delaware limited liability company (the “**Seller**”), and LHR Infrastructure, LLC, a Delaware limited liability company (“**Buyer**”).

### RECITALS

WHEREAS, Seller and Buyer are the only members of Millennium Bulk Terminals, LLC, a Delaware limited liability company (the “**Company**”) and are party to the Amended and Restated Limited Liability Company Agreement of the Company dated January 11, 2011 (as amended, the “**LLC Agreement**”);

WHEREAS, Seller directly owns 612 Membership Units (as defined in the LLC Agreement), representing 38% of the outstanding membership interests of the Company (the “**Units**”);

WHEREAS, on January 11, 2016, Arch Coal Inc., the parent company of Seller, and the majority of its wholly-owned domestic subsidiaries filed voluntary petitions for relief commencing cases under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Missouri (the “**Bankruptcy Court**”);

WHEREAS, Buyer desires to acquire the Units from Seller, and Seller desires to sell the Units to Buyer, upon the terms and subject to the conditions set forth in this Agreement; and

WHEREAS, the parties hereto intend to effectuate the transactions contemplated by this Agreement pursuant to section 363 of the Bankruptcy Code (as hereinafter defined).

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained in this Agreement and for other valuable consideration, Buyer and Seller agree as follows:

#### ARTICLE I. TERMS OF THE SALE

##### 1.01 Sale and Purchase of the Units.

Upon the terms and subject to the conditions of this Agreement, at the Closing, Seller shall sell, transfer and deliver to Buyer, and Buyer shall purchase and acquire from Seller, the Units, free and clear of any Encumbrance (as defined below), in exchange for (i) the release set forth in Section 1.03 below and (ii) the Stage 1 Option and Stage 2 Option set forth in the Throughput Option and Letter of Credit Maintenance Agreement between Arch Coal, Inc. and Lighthouse Resources, Inc. dated May 26, 2016 (the “**Option Agreement**”) (collectively, the “**Consideration**”).

### **1.02 The Closing.**

The closing of the purchase and sale of the Units (the “**Closing**”) shall be held at the offices of Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY, at 10:00 A.M. (New York City time) as soon as possible, but in no event later than two Business Days, after satisfaction or, to the extent permissible, waiver by the party or parties entitled to the benefit of the conditions set forth in Article V of this Agreement (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or, to the extent permissible, waiver of those conditions at the Closing), or at such other time or place as the parties may mutually agree in writing (the “**Closing Date**”).

### **1.03 Release.**

(a) Buyer hereby agrees that at the Closing, Seller shall cease to be a member of the Company and Seller shall no longer have any rights, liabilities or obligations under the LLC Agreement, including, for the avoidance of doubt, any capital contribution obligations pursuant to Section 6.3(b) or 6.3(c) of the LLC Agreement. At the Closing, in consideration of the foregoing purchase and sale, Buyer and its affiliates (including the Company), for itself, for its predecessors, successors, heirs, and assigns, and for any of its or their respective present and former officers, directors, stockholders, managers, members, partners, employees, agents, servants, associates, and representatives, shall release Seller and its affiliates, predecessors, successors, heirs, and assigns, and its or their respective present and former officers, directors, stockholders, managers, members, partners, employees, agents, servants, associates, and representatives from any and all claims, causes of action, proceedings, judgments, suits and demands, whether in law or in equity, and whether based on any federal law, state law, common law right of action, or otherwise, foreseen or unforeseen, matured or unmatured, known or unknown, accrued or not accrued, by reason of any matter, cause, or thing whatsoever from the beginning of the world to the Closing Date, in each case, relating to or arising out of the LLC Agreement or the parties’ relationship as members of the Company.

(b) Nothing in this Agreement shall preclude any action to enforce this Agreement, including but not limited to, claims related to any breach by Seller of its representations, warranties, or the performance of its covenants under this Agreement.

**ARTICLE II.  
REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller hereby represents and warrants to the Buyer as follows:

**2.01 Existence and Power.**

Seller is duly organized, validly existing and in good standing under the governing laws of Delaware, and has the requisite powers and all material governmental licenses, authorizations, consents and approvals required to complete the transactions contemplated by this Agreement.

**2.02 Authorization.**

The execution, delivery and performance of this Agreement by Seller and the consummation by Seller of the transactions contemplated hereby are within Seller's power and authority, and have been duly authorized by all necessary action on the part of Seller. This Agreement has been duly executed and delivered by Seller and constitutes a valid and binding agreement of Seller, enforceable against Seller in accordance with its terms.

**2.03 Governmental Authorization.**

The execution, delivery and performance of this Agreement by Seller requires no action by or in respect of, or filing with, any United States federal, state, or local, or non-United States government, political subdivision, governmental, regulatory or administrative authority, instrumentality, agency, body or commission, self-regulatory organization, or any court, tribunal or judicial or arbitral body (each, a "**Government Authority**") other than the Bankruptcy Court.

**2.04 Non-Contravention.**

Except for the Sale Order and NW Alloys Consent, the execution, delivery and performance by Seller of this Agreement and the consummation by Seller of the transactions contemplated hereby do not and will not (i) contravene, violate or conflict with certificate of formation or limited liability company agreement or equivalent organizational documents of Seller; (ii) contravene, violate or conflict with any provision of any federal, state or local statute, law, regulation, judgment, injunction, order or decree ("**Law**") binding upon or applicable to the Units or Seller; (iii) require the consent of any other third party, whether pursuant to the terms of the governing documents for Seller or otherwise; (iv) constitute a breach or default under or give rise to any right of termination, cancellation or acceleration of any right or obligations of any person or to a loss of any benefit to which Seller is entitled under any provision of any agreement, contract, license, permit or other instrument binding upon Seller or by which any of the properties, assets or rights of Seller or the Units are or may be bound; or (v) result in the creation or imposition of any lien, security interest, charge or encumbrance on any asset of Seller or result in the creation or imposition of any lien, security interest, charge or encumbrance upon any of the Units.

For purposes of this Agreement:

"**Final Order**" means an order or judgment of the Bankruptcy Court (or any other court

of competent jurisdiction) entered by the Bankruptcy Court (or such other court) that is not subject to a stay and has not been modified, amended, reversed or vacated without the consent of the Buyer and Seller.

“**Law**” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

“**Sale Order**” means a Final Order of the Bankruptcy Court in form and substance reasonably satisfactory to Buyer, pursuant to, inter alia, section 363 of the Bankruptcy Code (i) authorizing and approving, inter alia, (A) the sale of the Units to Buyer on the terms and conditions set forth herein and (B) entry into the Option Agreement, (ii) containing certain findings of facts, including a finding that Buyer is a good faith purchaser pursuant to section 363(m) of the Bankruptcy Code, and (iii) which is not subject to the stay of Federal Rule of Bankruptcy Procedure 6004(h).

“**NW Alloys Consent**” means all notices, consents and waivers of Norwest Alloys, Inc. required in connection with the transactions contemplated hereby, including under Section 16.1 of the Ground Lease between Northwest Alloys, Inc. and the Company dated January 11, 2011.

## **2.05 The Units.**

(a) Seller has good title to, and is the record and beneficial owner of the Units. At the Closing, upon delivery to the Buyer of membership interest powers duly endorsed in blank with respect to the Units, Buyer shall acquire all of Seller’s right, title and interest in and to, the Units, free and clear of any charge, limitation, condition, lien, security interest, adverse claim, mortgage, pledge, restriction, encumbrance or defect of title of any kind (collectively, “**Encumbrances**”). Other than the Units, neither Seller nor any of its affiliates, owns, directly or indirectly, any other interests in the Company.

## **ARTICLE III. REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer hereby represents and warrants to Seller as follows:

### **3.01 Organization and Existence.**

Buyer is duly organized, validly existing and in good standing under the governing laws of the State of Delaware, and has the requisite powers and all material governmental licenses, authorizations, consents and approvals required to complete the transactions contemplated by this Agreement.

### **3.02 Authorization.**

The execution, delivery and performance of this Agreement by Buyer and the consummation by Buyer of the transactions contemplated hereby are within Buyer’s power and authority, and have been duly authorized by all necessary action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer and constitutes a valid and binding

agreement of Buyer, enforceable against Buyer in accordance with its terms.

**3.03 Governmental Authorization.**

The execution, delivery and performance of this Agreement by Buyer require no action by or in respect of, or filing with, any Government Authority other than the Bankruptcy Court.

**3.04 Non-Contravention.**

Except for the Sale Order and the NW Alloys Consent, the execution, delivery and performance by Buyer of this Agreement and the consummation by Buyer of the transactions contemplated hereby do not and will not (i) contravene, violate or conflict with the certificate of formation or limited liability company agreement or equivalent organizational documents of Buyer; (ii) contravene, violate or conflict with any provision of any Law binding upon or applicable to Buyer; (iii) require the consent of any third party, whether pursuant to the terms of the governing documents for Buyer or otherwise that has not been obtained; or (iv) constitute a breach or default under or give rise to any right of termination, cancellation or acceleration of any right or obligations of any person or to a loss of any benefit to which Buyer is entitled under any provision of any agreement, contract, license, permit or other instrument binding upon Buyer or by which any of the properties, assets or rights of Buyer are or may be bound.

**ARTICLE IV.  
COVENANTS**

**4.01 Bankruptcy Court Approval.**

Each of Seller and Buyer acknowledge that this Agreement and the sale of the Purchased Assets are subject to Bankruptcy Court approval. Prior to, or as soon as reasonably practicable after, the execution of this Agreement, Seller has filed, or will file, a motion with the Bankruptcy Court seeking entry of the Sale Order. Seller and Buyer shall cooperate with each other in seeking approval of the transaction contemplated by this agreement and entry of the Sale Order. Buyer agrees that it will, at the Buyer's own cost, promptly take all actions that are reasonably requested by Seller to assist in obtaining the Bankruptcy Court's entry of the Sale Order, including, without limitation, furnishing affidavits, or other documents or information for filing with the Bankruptcy Court and making Buyer's employees and representatives available to testify before the Bankruptcy Court.

**4.02 Efforts to Obtain Consent.**

Each of Buyer and Seller shall cooperate with each other and use (and will cause their respective affiliates to use) their commercially reasonable efforts to take, or to cause to be taken, all actions, and to do, or to cause to be done, all things reasonably necessary to obtain the NW Alloys Consent.

**ARTICLE V.  
CONDITIONS TO CLOSING**

**5.01 Mutual Conditions to Obligations of Buyer and Seller.**

The obligations of Buyer and Seller to consummate the Closing are subject to the satisfaction of the following conditions:

- (a) The Sale Order shall have been entered by the Bankruptcy Court and shall not be subject to a stay pending appeal;
- (b) No provision of any applicable Law shall prohibit the consummation of the Closing;
- (c) The NW Alloys Consent shall have been obtained;
- (d) The Closing shall have occurred on or before July 1, 2016 or such later date as the parties may agree upon (other than through the failure of any party seeking to terminate this Agreement to comply fully with its obligations under this Agreement); and
- (e) The parties shall have duly executed and delivered at Closing the Assignment and Release Agreement, substantially in the form of Exhibit A (the “Assignment”).

## **ARTICLE VI. MISCELLANEOUS**

### **6.01 Further Assurances.**

Each party hereto shall execute and deliver such further instruments and take such further actions as the other party hereto may reasonably request in order to carry out the intent of this Agreement.

### **6.02 Notices.**

All notices, requests and other communications to any party hereunder shall be in writing signed by or on behalf of the party making the same, will specify the section under this Agreement pursuant to which it is given or made, and will be delivered (a) personally, (b) by facsimile to the number identified below, or (c) by registered or certified United States mail or by any reputable overnight courier service to the address identified below:

If to the Buyer, to:       LHR Infrastructure, LLC  
                                  c/o Lighthouse Resources Inc.  
                                  170 S. Main Street, Suite 700  
                                  Salt Lake City, UT 84101  
                                  Fax: 801-539-3789  
                                  Attn: Michael Klein

With a copy to:           Schwabe, Williamson & Wyatt  
                                  PacWest Center  
                                  1211 SW Fifth Avenue, Suite 1900

Portland, OR 97204  
Fax: 503-796-2900  
Attn: Charmin B. Shiely  
Alex Poust  
Brien Flanagan

If to Seller, to: Arch Coal West, Inc.  
One CityPlace Drive, Suite 300  
St. Louis, Missouri 63141  
Fax: 314-994-2743  
Attn: Robert G. Jones, President

With a copy to: Davis Polk & Wardwell  
450 Lexington Avenue  
New York, NY 10017  
Fax: 212-450-5672  
Attn: Marshall S. Huebner  
Brian M. Resnick

or to such other address or number and with such other copies, as such party may hereafter specify for the purpose by notice to the other party. Each such notice, request or other communication shall be effective (i) if given by facsimile, when such facsimile is transmitted to the facsimile number specified above and evidence of receipt is received or (ii) if given by any other means, upon delivery or refusal of delivery at the address specified above.

### **6.03 Amendments; No Waivers.**

(a) Any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and signed, (i) in the case of an amendment, by Buyer and Seller, or (ii) in the case of a waiver, by the party against whom the waiver is to be effective.

(b) No failure or delay by any party, in exercising any right, power or privilege hereunder, shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by Law.

### **6.04 Expenses.**

All costs and expenses incurred in connection with this Agreement shall be paid by the party incurring such costs or expenses.

### **6.05 Successors and Assigns.**

Neither this Agreement nor any of the rights, interests or obligations under this Agreement may be assigned or delegated, in whole or in part, by operation of Law or otherwise,



by either party without the prior written consent of the other party, and any such assignment without such prior written consent shall be null and void. The provisions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties and their respective successors and assigns.

**6.06 Governing Law; Forum.**

(a) This Agreement shall be governed by and construed in accordance with the Laws of the State of Colorado without regard to its conflicts of law rules.

(b) Legal actions or proceedings arising out of this Agreement shall be brought exclusively in the federal courts, or in the absence of federal jurisdiction in state courts, in either case in Salt Lake County, Utah. The parties hereto irrevocably and unconditionally submit to the jurisdiction of such courts and agree to take any and all future action necessary to submit to the jurisdiction of such courts. The parties hereto irrevocably waive any objection that they now have or hereafter may have to the laying of venue of any suit, action or proceeding brought in any such court and further irrevocably waive any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

**6.07 Counterparts; Effectiveness.**

This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed by the other party hereto. Signatures transmitted by facsimile shall be deemed to be original signatures.

**6.08 Entire Agreement.**

This Agreement and the Option Agreement constitute the entire agreement between the parties or their respective affiliates with respect to the subject matter hereof and supersedes all prior agreements, understandings and negotiations, both written and oral, between the parties with respect to the subject matter of this Agreement. No other representation, inducement, promise, understanding, condition or warranty not set forth herein has been made or relied upon by any party hereto. Neither this Agreement nor any provision hereof is intended to confer upon any person other than Buyer and Seller any rights or remedies hereunder.

**6.09 Headings.**

The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof.

**6.10 Public Announcements.**

Seller and Buyer shall consult with each other before issuing, and provide each other the opportunity to review and comment upon, any press release or other public statement with respect to the transactions contemplated hereby, and shall not issue any such press release or

make any such public statement prior to such consultation and without receiving the other's written consent thereto (which shall not unreasonably be withheld), except as may be required by applicable Law.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, this Agreement has been duly executed by Buyer and Seller  
as of the day and year first above written.

**BUYER:**

**LHR INFRASTRUCTURE, LLC**

By:  

Name: Liverett C King

Title: President & COO

**SELLER:**

**ARCH COAL WEST, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

IN WITNESS WHEREOF, this Agreement has been duly executed by Buyer and Seller  
as of the day and year first above written.

**BUYER:**

**LHR INFRASTRUCTURE, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SELLER:**

**ARCH COAL WEST, LLC**

By:  \_\_\_\_\_

Name: Robert G. Jones

Title: President

EXHIBIT A

FORM OF ASSIGNMENT

ASSIGNMENT AND RELEASE AGREEMENT

1. **Assignment.** Arch Coal West, LLC, a Delaware limited liability company (“**Assigning Party**”) assigns, transfers and delivers to LHR Infrastructure, LLC (“**Assignee**”) Assigning Party’s entire interest in 612 units (the “**Units**”) of membership interest of Millennium Bulk Terminals, LLC, a Delaware limited liability company (the “**Company**”), which constitutes Assigning Party’s entire interest in the Company, and Assignee hereby accepts the Units.
2. **Warranty.** Assigning Party transfers the Units to Assignee subject to the warranties and other terms and conditions in the Membership Interest Purchase Agreement dated May 26, 2016 between Assigning Party and Assignee.
3. **Governing Law.** This Assignment of Units is governed by the laws of the State of Colorado, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Assignment of Units.
4. **Venue.** Any action, suit, or proceeding arising out of the subject matter of this Assignment of Units will be litigated in the state or federal courts located in Salt Lake County, Utah. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Salt Lake County, Utah.
5. **Release.** Assignee and its affiliates (including the Company), for itself, for its predecessors, successors, heirs, and assigns, and for any of its or their respective present and former officers, directors, stockholders, managers, members, partners, employees, agents, servants, associates, and representatives, hereby release Assigning Party and its affiliates, predecessors, successors, heirs, and assigns, and its or their respective present and former officers, directors, stockholders, managers, members, partners, employees, agents, servants, associates, and representatives from any and all claims, causes of action, proceedings, judgments, suits and demands, whether in law or in equity, and whether based on any federal law, state law, common law right of action, or otherwise, foreseen or unforeseen, matured or unmatured, known or unknown, accrued or not accrued, by reason of any matter, cause, or thing whatsoever from the beginning of the world to the date hereof in each case, relating to or arising out of the Amended and restated Limited Liability Company Agreement of the Company dated January 11, 2011, as amended, or the parties’ relationship as members of the Company.

INTENDING TO BE BOUND, the undersigned have caused this Assignment to be duly executed as of the \_\_\_\_ day of \_\_\_\_\_, 2016.

ARCH COAL WEST LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: One CityPlace Drive, Suite 300  
St. Louis, Missouri 63141  
Email: dslone@archcoal.com  
Attention: Deck Slone

LHR INFRASTRUCTURE LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: 170 South Main, Suite 700  
Salt Lake City, Utah 84101  
Email: m.klein@lhr-inc.com  
Attention: Michael Klein