

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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SECURITIES AND EXCHANGE	:
COMMISSION,	:
	:
Plaintiff,	:
-v-	:
	:
PLATINUM MANAGEMENT (NY) LLC;	:
PLATINUM CREDIT MANAGEMENT, L.P.;	:
MARK NORDLICHT;	:
DAVID LEVY;	:
DANIEL SMALL;	:
URI LANDESMAN;	:
JOSEPH MANN;	:
JOSEPH SANFILIPPO; and	:
JEFFREY SHULSE,	:
	:
Defendants.	:
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No. 16-cv-6848 (BMC)

**NOTICE OF SUCCESSFUL BIDDER FOR THE ASSETS OF
LC ENERGY HOLDINGS LLC, AND LC ENERGY OPERATIONS LLC¹**

PLEASE TAKE NOTICE that:

1. On August 16, 2019, LC Energy Holdings LLC and LC Energy Operations LLC (together, “*Sellers*”), by and through Melanie L. Cyganowski, the duly appointed Receiver (the “*Receiver*”) of the Receivership Entities², on the one hand, and ERC Mining Indiana Corp. (“*Purchaser*”) and Quest Energy Inc. (“*Quest*”), on the other hand, entered into that certain Asset Purchase Agreement (the “*APA*”) pursuant to which Sellers will sell substantially all of

¹ All capitalized terms not defined herein shall have the meanings ascribed by the Sale Motion and/or Procedures Order (defined below).

² The “*Receivership Entities*” are Platinum Credit Management, L.P., Platinum Partners Credit Opportunities Master Fund LP (“*PPCO*”), Platinum Partners Credit Opportunities Fund (TE) LLC, Platinum Partners Credit Opportunities Fund LLC, Platinum Partners Credit Opportunities Fund (BL) LLC, Platinum Liquid Opportunity Management (NY) LLC, Platinum Partners Liquid Opportunity Fund (USA) L.P., Platinum Partners Liquid Opportunity Master Fund L.P., Platinum Partners Credit Opportunities Fund International Ltd and Platinum Partners Credit Opportunities Fund International (A) Ltd.

their assets to Purchaser and Purchaser will assume certain liabilities of Sellers in consideration for Sellers payment to Purchaser of \$380,000.00 in cash and assignment to Purchaser of \$250,000.00 in cash collateral currently securing a certain bond in favor of the State of Indiana.

2. The APA was entered into pursuant to (1) the motion for entry of an order (I) (a) authorizing the Receiver to sell (the “*Sale*”) PPCO’s rights in and to LC Energy Holdings LLC, LC Energy Operations LLC and/ or their assets (collectively, “*LC Energy*”) free and clear of all liens, claims, encumbrances and other interests (collectively, “*Encumbrances*”); (b) authorizing the Receiver to enter into a stalking horse agreement and approving certain bid protections in connection therewith; (c) approving the form and manner of notice of the Sale; (d) approving certain procedures for the filing of claims against LC Energy and the resolution thereof and (e) approving bid procedures for the sale of LC Energy upon the selection of a stalking horse and (II) approving the sale of LC Energy free and clear of all Encumbrances (the “*Sale Motion*”), (2) Memorandum of Law in Support of the Sale Motion, (3) Declaration of Melanie L. Cyganowski in Support of the Sale Motion (Docket No. 422) and (4) the January 17, 2019 order approving the procedural requests for relief in the Sale Motion (the “*Procedures Order*”). Docket No. 444.

3. This notice is being filed and served pursuant to and in accordance with the Procedures Order.

4. The other material provisions of the APA are:³

Acquired Assets	Substantially all of Sellers’ assets (the “ <i>LC Energy Assets</i> ”).
Assumed Liabilities	(i) All federal, state, local and other environmental liabilities, regulatory liabilities, and environmental or regulatory fines or orders

³ The following summary is qualified in its entirety by reference to the provisions of the APA. In the event of any inconsistencies between the provisions of the APA and the terms herein, the terms of the APA shall control.

	<p>arising from or in any way related to the LC Energy Assets, whether known or unknown, asserted or unasserted, absolute or contingent, direct or indirect, or due or to become due, and regardless of when sustained, incurred or asserted or when the relevant events occurred or circumstances existed;</p> <p>(ii) all liabilities, obligations and commitments for any taxes or governmental assessments arising from or in any way related to the LC Energy Assets arising after the Closing Date; and</p> <p>(iii) all other liabilities or obligations of any kind whatsoever arising from or in any way related to the LC Energy Assets arising after the Closing Date.</p>
As-Is Where-Is	The sale by Sellers to Purchaser shall be on an “as is” and “where is” basis, with all faults and without recourse.
Limited Representations and Warranties	Sellers make no representations or warranties in the APA.
Closing Consideration	<p>The following consideration will be conveyed at the closing of the Sale transaction:</p> <p>(i) Purchaser shall assume from Sellers the Assumed Liabilities pursuant to an instrument of assumption delivered at closing;</p> <p>(ii) Sellers shall pay to Purchaser \$380,000.00 (the “<i>Closing Cash Consideration</i>”); and</p> <p>(iii) Sellers shall assign and convey to Purchaser the \$250,000.00 cash collateral currently securing the bond in favor of the State of Indiana, pursuant to an instrument of assignment delivered at closing.</p>
Conditions to Closing of the Acquisition	<p>Material conditions to the closing of the Sale include:</p> <p>(i) fulfillment by Sellers of all of their obligations under the Procedures Order;</p> <p>(ii) entry of an order approving the Sale to Seller’s reasonable satisfaction; and</p> <p>(iii) Sellers payment of the Closing Cash Consideration.</p>
Mutual Release	The APA provides for each Party’s irrevocable, full and final release of, and discharge of any claims or causes of action that it may have against, the other Party and the other Party’s affiliates, including all directors, officers, employees and agents of the foregoing.
Purchaser and Quest Indemnification of Sellers	The APA provides for Purchaser’s and Quest’s indemnification of the Sellers and Sellers’ affiliates for all Assumed Liabilities.

5. Attached hereto as **Exhibit A** is an affidavit of the Receiver in support of the Sale.

6. Attached hereto as **Exhibit B** is a proposed order approving the APA and granting the substantive relief requested in the Sale Motion (the “*Sale Order*”).

7. **Included in the proposed relief granted in the Sale Order is the deemed termination of all contracts, agreements and/ or leases of any kind between any contract counterparty and LC Energy unless scheduled for assignment under the APA (the “*Non-Assigned Agreements*”).**

8. On or before **September 10, 2019** (the “*Response Deadline*”), any party-in-interest wishing to be heard with respect to the selection of Purchaser as the “Successful Bidder,” the Receiver’s request for approval of the APA and the termination of the Non-Assigned Agreements (other than parties named in the caption), shall electronically deliver to the Receiver via the Receiver’s email address (platinumreceiver@otterbourg.com), that party-in-interest’s response (collectively, the “*Responses*”); parties-in-interest (other than parties named in the caption) shall not file Responses on the ECF docket in this action.

9. On or before two (2) business days after the Response Deadline, the Receiver shall compile all the Responses she has received and shall file the Responses under one docket entry on the ECF docket in this action.

10. The Receiver shall have seven (7) business days following the Response Deadline to file any reply in further support of the Sale.

11. The Court may then either schedule a hearing to consider the Sale or decide to enter an order approving or denying the Sale without oral argument.

Dated: New York, New York
August 27, 2019

OTTERBOURG P.C.

By: /s/ Erik B. Weinick
Adam C. Silverstein
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*Attorneys for Melanie L. Cyganowski, as
Receiver*

EXHIBIT A

Cyganowski Affidavit

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

-----X	
SECURITIES AND EXCHANGE	:
COMMISSION,	:
	:
Plaintiff,	:
-v-	:
	:
PLATINUM MANAGEMENT (NY) LLC;	:
PLATINUM CREDIT MANAGEMENT, L.P.;	:
MARK NORDLICHT; DAVID LEVY;	:
DANIEL SMALL; URI LANDESMAN;	:
JOSEPH MANN; JOSEPH SANFILIPPO; and	:
JEFFREY SHULSE,	:
	:
Defendants.	:
-----X	

No. 16-cv-6848 (BMC)

**AFFIDAVIT OF MELANIE L. CYGANOWSKI, AS RECEIVER,
IN FURTHER SUPPORT OF MOTION FOR ENTRY OF AN ORDER
APPROVING THE SALE OF THE ASSETS OF LC ENERGY HOLDINGS LLC
AND LC ENERGY OPERATIONS LLC, FREE AND CLEAR OF ALL LIENS,
CLAIMS, ENCUMBRANCES AND OTHER INTERESTS¹**

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

1. I, Melanie L. Cyganowski, having been duly sworn, herein attest that I make this affidavit in my capacity as the duly appointed Receiver (the “*Receiver*”) of Platinum Credit Management, L.P., Platinum Partners Credit Opportunities Master Fund LP (“*PPCO*”), Platinum Partners Credit Opportunities Fund (TE) LLC, Platinum Partners Credit Opportunities Fund LLC, Platinum Partners Credit Opportunities Fund (BL) LLC, Platinum Liquid Opportunity Management (NY) LLC, Platinum Partners Liquid Opportunity Fund (USA) L.P., Platinum

¹ All capitalized terms not defined herein shall have the meanings ascribed by the Sale Motion and/or Procedures Order (defined below).

Partners Liquid Opportunity Master Fund L.P., Platinum Partners Credit Opportunities Fund International Ltd and Platinum Partners Credit Opportunities Fund International (A) Ltd (collectively, the “*Receivership Entities*,” and the estate created by the receivership being referred to as the “*Receivership Estate*”).

2. I submit this affidavit in support of my motion (the “*Sale Motion*”) for entry of an order approving the sale of the assets of LC Energy Holdings LLC and LC Energy Operations LLC (collectively, “*LC Energy*”) free and clear of all liens, claims, encumbrances and other interests (collectively, “*Encumbrances*”).

I.
PRELIMINARY STATEMENT

3. As set forth in the attached notice (the “*Sale Notice*”), I have selected ERC Mining Indiana Corp. (“*Purchaser*”) as the Successful Bidder for the Goldstar Mine located in Green County, Indiana (the “*Mine*”) in accordance with the terms of the Procedures Order (defined below). Purchaser is the retained manager of the Mine.

4. Promptly after this Court authorized me to commence the LC Energy sale process, my investment banker, Houlihan Lokey Capital, Inc. (“*Houlihan Lokey*”), thoroughly and diligently marketed LC Energy, which owns the Mine. To that end, Houlihan Lokey contacted nine local strategic buyers, all of whom but one declined to bid. The one offer received for LC Energy was predicated on the Receivership Estate *paying* the buyer over \$1 million for potential environmental liabilities which the bidder believed may well exceed any short-term future production from the Mine.

5. When it became apparent that no additional bids were forthcoming, I met and conferred with Houlihan Lokey, my financial advisors, my local Indiana bankruptcy and

environmental counsel, and certain other interested parties, to determine how best to dispose of LC Energy without the prospects of a ready, willing and able buyer for the Mine. Based on those discussions, I initially determined that, in my business judgment, the abandonment of LC Energy was in the best interests of the Receivership Estate.

6. While I believed, and continue to believe, that upon abandonment Purchaser, in its capacity as manager of the Mine, would be responsible to remediate the Mine, Purchaser disagreed. Rather, Purchaser asserted that LC Energy would remain liable for any such costs and expenses, expenses that Purchaser asserted could well exceed \$1.5 million. To avoid a lengthy and costly dispute over the ramifications of abandonment, the parties soon commenced negotiations about the future of the Mine, and responsibility for satisfying associated liabilities. As set forth in detail below, I ultimately agreed with Purchaser in an Asset Purchase Agreement dated August 16, 2019 (the “*APA*”), that LC Energy would sell the Mine to it while Purchaser would assume any and all current and future clean-up and other remediation costs at the Mine in consideration for a payment by LC Energy to Purchaser of \$380,000 and an assignment to Purchaser of the \$250,000 in cash collateral currently securing a bond in favor of the State of Indiana

7. In accordance with the Procedures Order, upon the execution of the *APA*, I was to, and did, provide an opportunity for parties having previously expressed an interest in LC Energy to overbid the *APA*. No other party has since expressed an interest in overbidding Purchaser’s bid.

8. The proposed transaction with Purchaser, in my business judgment, is in the best interests of the Receivership Estate and its stakeholders because it, *inter alia*, (i) fixes the amount of remediation and clean-up costs for which the Receivership Estate is liable, (ii) is the highest or

otherwise best offer for LC Energy and (iii) ends the last recurring asset maintenance expense of the Receivership Estate.

9. As set forth below, the sale process made clear to me and my professionals that bidders were unwilling to pay for LC Energy when the (a) Mine has uncertain prospects for the reopening as a profitable operation and (b) the assets might bring with them material reclamation and other related environmental liabilities exceeding \$1.5 million. While I believe that upon abandonment Purchaser, in its capacity as Mine operator, would be required to pay such liabilities, Purchaser disagreed and raised issues of fact and law which inevitably would have to be adjudicated by this Court before abandonment would be approved. Entering into the APA with Purchaser thus eliminates costly and uncertain litigation and permanently fixes the Receivership Estate's liabilities in connection with its ownership of LC Energy. That fact was instrumental in my decision to accept Purchaser's offer. Additionally, Purchaser and its parent, Quest Energy Inc. ("*Quest*") have agreed to indemnify LC Energy for any claims associated with the Assumed Liabilities, further insulating the Receivership Estate from any future liability.

10. In light of the forgoing and the facts set forth in the Sale Motion and its related pleadings, I hereby request that this Court approve entry into the APA and the sale of LC Energy to Purchaser.

II. **BACKGROUND**

A. PPCO's Acquisition of Lily Group

11. On February 16, 2012, PPCO provided Lily Group, Inc. ("*Lily Group*") – an entity founded to develop, operate and open access to the Mine – with a \$13 million loan pursuant to a Note and a Note Purchase Agreement (the "*Loan*").

12. To collateralize the Loan, PPCO acquired a lien interest in the Mine (the

“*Mortgage*”) and was granted a security interest in most of Lily’s personal property, mineral rights and lease rights, except lease rights for: (1) surface land owned by the State of Indiana, through its Department of Natural Resources (the “*DNR*”), used as a coal holding facility and for a waste disposal plot (the “*DNR Lease*”); (2) a railroad siding owned by the Indiana Railroad (the “*IRR Sidetrack Lease*”); and (3) mineral rights owned by Indiana Railroad for a small amount of coal (the “*IRR Coal Lease*”) (collectively, the “*Non-Collateralized Leases*”).²

13. On September 23, 2013 (the “*Petition Date*”), Lily Group filed a voluntary petition for relief under chapter 11 of the United States Code in the United States Bankruptcy Court for the Southern District of Indiana, Terre Haute Division (the “*Bankruptcy Court*”). See case number 13-81073 (the “*Chapter 11 Case*”).

14. Shortly after the Petition Date, PPCO assigned the Loan to LC Energy, an entity created and wholly owned, albeit indirectly, by Receivership Entity PPCO. LC Energy subsequently extended postpetition bankruptcy financing to Lily Group in the approximate amount of \$715,000 in consideration for which LC Energy was granted a super-priority lien and claim against all of Lily Group’s assets pursuant to an order of the Bankruptcy Court. See *id.* and Bankruptcy Court Docket No. 34 (*Interim Order Authorizing Debtor to Utilize Cash Collateral on an Interim Basis; Authorizing Debtor to Enter into Debtor-In-Possession Financing Agreement; and Providing Adequate Protection to Other Secured Creditors*), ¶¶ 1.2-1.3.

15. On February 28, 2014, the Bankruptcy Court entered the *Order Pursuant to 11 U.S.C. §§ 363 and 365 (I) Approving the Sale of Substantially all of the Debtor’s Assets Free*

² The IRR Sidetrack Lease and the IRR Coal Lease have since expired on their own terms and I provided IRR with a Bill of Sale for Sidetracks A and B (defined in the IRR Lease) as I was obligated to do under the lease agreements.

and Clear of Liens, Claims, Interests, and Encumbrances with Valid Liens to Attach to Proceeds of Sale; (II) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (III) Granting Certain Related Relief (the “**363 Sale Order**”) pursuant to which it approved the sale of substantially all of Lily Group’s assets (the “**Acquired Assets**”) to LC Energy free and clear of all Encumbrances in consideration for a credit bid of PPCO’s prepetition and postpetition debt. See Bankruptcy Court Docket No. 302. The Acquired Assets included Lily Group’s interest in (i) the Real Property and (ii) an estimated 1,200 acres of coal under a January 1, 2011 lease (the “**Western Pocahontas Lease**”) with Western Pocahontas Properties Limited Partnership (“**Western Pocahontas**”).³ By virtue of the credit bid, there were no cash sale proceeds paid for the Acquired Assets. The 363 Sale Order provided that all Encumbrances were to attach to the proceeds of the sale to the same extent, validity, priority, and perfection as existed on the Petition Date and all such extent, validity, priority and perfection was to be determined by further order of the Bankruptcy Court. See 363 Sale Order, ¶ 4.

B. The Pre and Post-Bankruptcy Lien Disputes

16. Prior to the commencement of this receivership, the following actions/ claims were asserted against PPCO and/ or LC Energy (collectively, the “**Lien Disputes**”).

17. **The Greene County Mechanic’s Lien Action.** On June 14, 2012, MacAllister Machinery Co., Inc. (“**MacAllister**”) filed a mechanic’s lien and corresponding complaint against Lily Group in Greene County, Indiana pursuant to which it sought to foreclose on its security interest, several other creditors’ mechanics’ lien interests and the Mortgage. PPCO subsequently filed a counterclaim and cross-claim against MacAllister seeking to foreclose its Mortgage and

³ While the Western Pocahontas Lease was to expire on its own terms on January 1, 2016, it has since been extended several times, including post-receivership, in order to maintain the value of the Mine at a time when it appeared to have value to the Receivership Estate.

alleging its Mortgage and security interests were superior to all other lien creditors of Lily Group. This case remains pending but is stayed pursuant to the Receivership Order (defined below). *See Notice of Stay* filed by PPCO on January 3, 2017 in the action captioned *MacAllister Machinery Co., Inc. v. Lily Group, Inc., et al.*, Greene Circuit Court, Case No. 18C01-1206-PL-000020 (the “*Greene County Mechanic’s Lien Action*”).

18. **The Stuckert & Howell Loan.** On February 26, 2013, James Stuckert, his wife, Diane Stuckert and Solomon Howell (“*Stuckert & Howell*”) provided Lily Group with a \$6 million loan, \$5 million of which was secured by a lien on Lily Group’s equipment (the “*Stuckert & Howell Loan*”). As part of the Stuckert & Howell Loan, PPCO agreed to, *inter alia*, subordinate its senior secured lien in Lily Group’s equipment to the extent of \$5 to allow the Stuckert & Howell financing to proceed. Stuckert & Howell did not file a UCC financing statement to perfect their lien rights.⁴ Stuckert & Howell filed a complaint against PPCO on November 6, 2015 in the Greene County Circuit Court to determine the value of the Lily Group’s equipment sold to LC Energy in the Chapter 11 Case.

19. **The Lien Challenge Complaint.** On February 24, 2014, before the 363 Sale Order was entered by the Bankruptcy Court, LC Energy commenced an adversary proceeding in the Bankruptcy Court against certain creditors of Lily Group asserting liens or interests in the Acquired Assets by filing a *Complaint to Determine Validity, Priority and Extent of Liens* (the “*Lien Challenge Complaint*”). *See* Adversary Proceeding No. 14-58008. The Lien Challenge Complaint requested that the Bankruptcy Court determine the validity, priority and extent of the liens in the Acquired Assets. The adversary proceeding has since been stayed by the

⁴ Stuckert & Howell subsequently purchased the MacAllister mechanic’s lien and claim.

Receivership Order. *See Notice of Submission of Stay* [Docket No. 211] filed by LC Energy in *LC Energy Holdings, LLC v. Kreg Equities, Ltd., et al.* (Bankr. S.D. IN. Adversary Proceeding No. 14-58008) (the “*Lien Challenge Adversary Action*”).

20. **The Committee Motion for Leave, Standing, and Authority to Prosecute Claims against LC Energy.** On July 1, 2015, after the 363 Sale Order was entered, the official committee of unsecured creditors of Lily Group (the “*Committee*”) moved the Bankruptcy Court for leave, standing and authority on behalf of Lily Group to: (1) commence, prosecute and settle fraudulent transfer and avoidance claims against LC Energy; (2) pursue subordination of LC Energy’s prepetition claim against Lily Group and (3) pursue liability claims against LC Energy (the “*Motion for Leave*”). *See* Bankruptcy Docket No. 435 (*Motion for Authority of the Official Committee of Unsecured Creditors for Entry of an Order Granting Leave, Standing and Authority to Commence, Prosecute and Settle Certain Claims and Actions Against LC Energy Holdings, Inc.*). LC Energy opposed the Motion for Leave, asserting that the Committee lacked standing and made no showing of colorable claims. To date, the Bankruptcy Court has not ruled on the Motion for Leave.

21. Simultaneously with its Motion for Leave, the Committee filed an Adversary Complaint against LC Energy and PPCO seeking recovery of the value of the Non-Collateralized Leases less the amounts lent by PPCO to Lily Group after the Petition Date. *See Official Committee of Unsecured Creditors v. LC Energy Holdings LLC, et al.* (Bankr. S.D. IN. Adversary Case No. 15-58025) (the “*Committee Action*”). The Committee alleges that the value of the Mine’s coal and other assets are dependent on the value of the Non-Collateralized Leases, and without them, access to the coal and operation of the Mine is impossible. The Committee goes on to allege that the value of Non-Collateralized Leases is at least 50% of the total value of

the Mine.

22. On October 16, 2015, LC Energy filed its Answer and Affirmative Defenses in the Committee Action [Docket No. 19 in Adversary Case No. 15-58025] and on October 21, 2015, PPCO filed its Motion to Dismiss for failure to state a claim, asserting that the only party the Committee seeks relief from is LC Energy and that the Committee failed to meet the pleading requirements against PPCO. *See Amended Motion to Dismiss Plaintiff's Complaint as to Platinum Partners Credit Opportunity Master Fund LP* [Docket No. 24] and *Memorandum in Support of Amended Motion to Dismiss Plaintiff's Complaint as to Platinum Partners Credit Opportunity Master Fund LP* [Docket No. 25], pp. 1-2, 5-7.

23. On December 14, 2015, the Committee filed its response to the Motion to Dismiss and included a proposed amended complaint asserting more factual details against LC Energy and PPCO, and including five causes of action: (1) Recovery of the Value of the Non-Collateralized Leases to LC Energy's Estate; (2) Fraudulent Transfer (PPCO); (3) Lender Liability (PPCO); (4) Equitable Subordination (both); and Disallowance of Claim (LC Energy). *See* proposed Amended Complaint [Docket No. 27-1]. The Bankruptcy Court has not ruled on the Motion to Dismiss or otherwise ruled regarding the Committee's proposed amended complaint. *See* Sale Motion at Cyganowski Dec., ¶ 21. This action is now stayed because of the Receivership Order. *See id.*

C. The Quest Agreement

24. On April 13, 2015, LC Energy entered into a *Mining and Managing Agreement* (the "*Management Agreement*") with Purchaser, a wholly owned subsidiary of Quest – a manager of thermal and metallurgical coal operations throughout the Illinois and Appalachian basins – pursuant to which Purchaser agreed to provide management services to LC Energy.

Pursuant to the Management Agreement, Purchaser manages the Mine for a monthly cash and per-ton fee, is the holder of the mining permit, provides the reclamation bonding (the “*Bond*”) – although LC Energy paid \$250,000.00 to further collateralize the Bond – is the owner of some of the equipment located at the Mine and employees the personnel working at the Mine. LC Energy owns the remaining equipment and infrastructure, is the lessee of the mineral (and the owner of some of the mineral and surface) and provides funding for the operations.

25. Specifically, under the Management Agreement, Purchaser (i) provides management and consulting services in support of the development and implementation of operational and financial plans of LC Energy, (ii) provides staff to provide administrative support services to LC Energy, (iii) advises LC Energy regarding its production, reserves development and business operations and (iv) runs all of the mining operations at the Mine. *See* Management Agreement, ¶ 2.1 and 3.1. Moreover, Purchaser provides ordinary and customary lease and land administration services for certain properties, including administering all leases, maintaining all land, lease and other related records and providing associated services. *See id.* at ¶ 2.1(c).

D. Commencement of this Receivership and the Protections Afforded by the Receivership Order

26. On December 19, 2016, this Court entered the *Order Appointing Receiver* (amended on January 30, 2017) in the above-captioned matter (the “*Receivership Case*”). *See* Docket Nos. 6 and 59. On July 6, 2017, this Court accepted the resignation of the originally appointed receiver, Bart M. Schwartz and appointed me as Receiver effective immediately (*i.e.*, July 6, 2017). *See* Docket No. 216.

27. On October 16, 2017, this Court entered the *Second Amended Order Appointing*

Receiver (the “**Receivership Order**”). *See* Docket No. 276. Much like the statutory protections afforded a debtor in bankruptcy, the Receivership Order provides numerous protections to the Receivership Entities and their property to safeguard their collective assets for the benefit of all stakeholders in the Receivership Case. To that end, the Receivership Order vests this Court with exclusive jurisdiction over each of the Receivership Entities and their property. *See* Receivership Order, ¶ 1 (“This Court continues to take *exclusive* jurisdiction and possession of the assets, of whatever kind and wherever situated, of the Receivership Entities (the “Receivership Assets”).”) (emphasis supplied).

28. To further protect the value of the Receivership Entities and their property, the Receivership Order:

- Directs me to take custody of all “Receivership Property,” defined as “all property interests of the Receivership Entities ... of whatever kind, which the Receivership Entities own, possess, have a beneficial interest in, or control directly or indirectly.” Receivership Order, ¶ 6.A.
- Enjoins the creation or enforcement of a lien on any Receivership Property. *See* Receivership Order, ¶ 22.A.
- Prohibits the dissipation or diminishment of value of any Receivership Property by, *inter alia*, enforcing claims against any Receivership Property or attempting to modify, terminate or accelerate (the due date) any indebtedness, security agreement or other agreement which affects any Receivership Property. *See* Receivership Order, ¶ 22.C.

29. More generally, the Receivership Order enjoins “Ancillary Proceedings” by prohibiting parties from commencing or continuing foreclosure actions, default proceedings, or other actions of any nature involving Receivership Property, wherever located. *See* Receivership Order, ¶ 24. Furthermore, all courts having any jurisdiction over Ancillary Proceedings are enjoined from taking or permitting any action until further Order of this Court. *See* Receivership Order, ¶ 26.

30. Credit Funding LLC owns 100% of LC Energy Holdings LLC, which, in turn, owns 100% of LC Energy Operations LLC. PPCO owns 100% of Credit Funding LLC. Accordingly, LC Energy is Receivership Property, the legal actions underlying the Lien Disputes are each stayed, this Court is vested with the exclusive authority to resolve the liens and claims being asserted against LC Energy and all actions against LC Energy are enjoined.

E. My Retention of Houlihan Lokey

31. To assist me with the monetization of certain assets, I retained Houlihan Lokey. Because of Houlihan Lokey's areas of expertise, it was retained to market and sell specific assets including LC Energy. This Court approved Houlihan Lokey's retention on November 11, 2017, *nunc pro tunc* to September 11, 2017 and issued a Memorandum Opinion regarding Houlihan Lokey's retention on November 21, 2017 (the "*Houlihan Opinion*"). *See* Docket No. 285. As this Court acknowledged in the Houlihan Opinion, Houlihan Lokey was retained because of, among other reasons, its extensive experience with several hedge fund wind-downs, its experience with marketing illiquid assets across a broad spectrum of alternative investments, and its breadth of knowledge of potential investors to create a competitive environment to maximize recovery. *See* Houlihan Opinion at 6.

F. The Receivership Estate's Preparation for the Sale of LC Energy and the Sale Motion

32. The Sale Motion sets forth in detail the steps my team and I took to prepare LC Energy for sale. In short, upon my appointment, my retained professionals and I analyzed the legal, financial, regulatory and business issues relating to PPCO's investment in LC Energy and the potential options for disposition thereof. Assisting my team in that effort was, among others, (i) Houlihan Lokey, (ii) Goldin and Associates and (iii) Indiana legal counsel with expertise in

bankruptcy matters and local real estate. I subsequently retained local Indiana counsel with expertise in environmental issues when it became clear that a sale of LC Energy might not materialize.

33. Initiating a sale process for LC Energy was complicated given the lien disputes discussed in detail above. In light of the complications, I filed the Sale Motion with this Court on December 6, 2018 through which I sought entry of an order (I) (a) authorizing me to sell (the “*Sale*”) the Receivership’s rights in and to LC Energy free and clear of all Encumbrances; (b) authorizing me to enter into a stalking horse agreement and approving certain bid protections in connection therewith; (c) approving the form and manner of notice of the Sale; (d) approving certain procedures for the filing of claims against LC Energy and the resolution thereof (the “*LC Energy Claims Procedures*”) and (e) approving bid procedures for the sale of LC Energy upon the selection of a stalking horse (the “*Bidding Procedures*” and together with the LC Energy Claims Procedures, the “*Procedures*”) and (II) approving the sale of LC Energy free and clear of all Encumbrances. Docket No. 422.

34. On January 17, 2019, this Court entered an order approving the procedural relief requested in the Sale Motion (the “*Procedures Order*”). Docket No. 444. Among other relief granted under the Procedures Order, this Court set March 4, 2019 (the “*Claims Bar Date*”) as the deadline by which all Claims were to be filed against LC Energy.

G. The LC Energy Claims

35. I provided actual notice of the Claims Bar Date to LC Energy’s known creditors, including the (i) Indiana Department of Environmental Management, (ii) the DNR, (iii) Indiana Department of Revenue - Bankruptcy Section – MS 108 and (iv) Greene County Treasurer and Assessor, and published notification of the Claims Bar Date (i) on my website at

<http://www.platinumreceivership.com> and (ii) in the Greene County Daily World and the Sullivan Daily Times.⁵

36. I received three timely claims against LC Energy: one by the bankruptcy estate of Lily Group submitted jointly by Lily Group and the Committee and 2 separate Proofs of Claim on behalf of James W. Stuckert, the James W. Stuckert Revocable Trust, Diane V. Stuckert, and Solomon O. Howell. Specifically:

- (i) the Lily Group estate asserts a claim to not less than 50% of the proceeds derived from the proposed sale of the LC Energy assets on account of the Non-Collateralized Leases;
- (ii) James W. Stuckert and the James W. Stuckert Revocable Trust asserted a secured claim in the amount of approximately \$1.4 million; and
- (iii) James W. Stuckert, Diane V. Stuckert, and Solomon O. Howell asserted a secured claim in the amount of approximately \$6.2 million.⁶

III. THE PROPOSED SALE OF LC ENERGY

A. The LC Energy Marketing Process

37. Houlihan Lokey advised and assisted me in the marketing of LC Energy, including assisting me in preparing LC Energy for sale and designing and executing a marketing process which sought to maximize bids and obtain the highest value for LC Energy.

38. Among other areas of expertise, Houlihan Lokey is a leading investment bank with a dedicated team – the Illiquid Financial Assets practice – focused on complex asset transactions with extensive experience advising funds in wind-down. Houlihan Lokey is one of the most experienced and recognized “liquidity advisors” across a broad spectrum of investment and asset types. In addition, Houlihan Lokey’s Industrials Group is one of the largest practices

⁵ Indiana does not have a newspaper with statewide circulation, so these publications were utilized instead.

⁶ The claims filed against LC Energy were to be adjudicated in accordance with the Procedures Order, but in light of the lack of proceeds from the sale of LC Energy, those claims should be considered moot.

on Wall Street and includes a dedicated metals and mining team. Houlihan Lokey has advised on the restructuring of several coal miners, including Alpha Natural Resources, Arch Coal, Armstrong Energy, Black Diamond Mining Company, Foresight Energy, James River Coal, Patriot Coal Corporation and Peabody Energy.

39. Houlihan Lokey launched a marketing process for LC Energy on January 22, 2019, contacting nine prospective buyers to solicit interest in acquiring LC Energy. The list of prospective buyers was constructed based on national and local coal mining market participants who operate in the Illinois Basin – the region where the Mine is located.

40. Five prospective buyers executed non-disclosure agreements and were provided with access to an online data room containing information on LC Energy, including (i) a Confidential Information Memorandum, (ii) a mine economics model completed by Quest, (iii) a coal resource confirmation and valuation completed by Skelly and Loy, Inc., (iv) relevant permitting documents, (v) key legal documents and (vi) various other technical documents and analyses.

41. I received only one written offer for LC Energy; an offer that provided no cash or other consideration to be paid to the Receivership Estate. Rather, the offer required that the Receivership Estate assume all reclamation and U.S. Army Corps of Engineers Permit liabilities and *pay* \$1.2 million. In addition, the offer was contingent on a 100-day due diligence period during which time the bidder would, *inter alia*, core drill the Mine reserve to check for tonnage, geology and quality of the reserve. The Receivership Estate would be responsible for paying all costs and expenses of maintaining the Mine during the due diligence period; expenses which could cost in excess of \$100,000.

42. I thoroughly evaluated the offer and all my other disposition alternatives with Houlihan Lokey, my financial advisors, my outside counsel and my Indiana bankruptcy and environmental counsel. After extensive deliberations, I concluded, in my business judgment, that the offer should not be accepted for several reasons, including the fact that:

- (i) It not only provided no consideration to the Receivership Estate but required the Receivership Estate to pay it \$1.2 million for future reclamation and clean-up costs which I believed was in excess of any future liability LC Energy may be responsible for.
- (ii) The Receivership Estate would bear the maintenance costs and expenses during the 100-day due diligence period, further depleting the assets of the Receivership Estate.
- (iii) The offer was entirely contingent and would delay finality as to the future of LC Energy and the Mine for well over three months.

43. The sale process made evident that bidders were unwilling to pay for LC Energy when ownership of the Mine might trigger material reclamation and other related environmental liabilities exceeding \$1.5 million and the prospects of running a profitable mine operation are uncertain. Furthermore, Houlihan Lokey's discussions with interested parties suggested several other factors significantly limited overall buyer appetite and severely impacted pricing, including:

(i) **Economic Risk:** Multiple prospective buyers stressed the difficulty of profitably operating the Mine, given current coal prices and estimated operating costs.

(ii) **“Start-up” Risk:** Since the Mine is non-operational, prospective buyers were cautious given (a) potential costs required to dig a new mine portal to access the reserves, (ii) cost of improvements required to efficiently operate the wash facility and (iii) cost for additional equipment required to mine coal, among other factors. Certain prospective buyers also indicated

they saw little or no value in the equipment on-site, as it is dated and/or redundant with their current inventory.

(iii) **Legal Risk:** Certain prospective buyers inquired as to the title to the property and mineral rights and whether these rights would continue or need to be renegotiated by the prospective buyer.

44. While these factors are unique to the Mine, coal mines in Indiana are generally experiencing financial difficulties. For example, Peabody Indiana Services LLC recently announced its Somerville Central Mine will close in early October. The mine opened in 2000 near the Gibson County town of Oakland City, about 140 miles southwest of Indianapolis. The mine closure is reported to be the second this year in the coal-producing region. White Stallion Energy closed its Liberty Mine in adjacent Warrick County in April, idling about 80 workers.

B. Purchaser's Offer and the APA

45. Upon deciding that the sole written offer I received for LC Energy should be rejected, I immediately tasked my team with preparing LC Energy for abandonment. To that end, my team began preparing pleadings to be filed with this Court requesting authorization to abandon the asset and commenced discussions with certain stakeholders regarding the ramifications of abandonment. While I believed that the Management Agreement with Purchaser provided that it would be responsible for any and all remediation and other clean-up costs associated with the Mine, Purchaser disagreed with my reading of the agreement and the law. In contrast, Purchaser asserted that LC Energy and the Receivership Estate would be liable for in excess of \$1.5 million of such costs. It became immediately clear to me that any request for abandonment would be opposed by Purchaser and lengthy and uncertain litigation would ensue.

46. To avoid this result, the parties commenced negotiations to determine if Purchaser would purchase LC Energy and assume all future liabilities in connection with the Mine in consideration for a one-time lump sum payment by LC Energy to Purchaser. Ultimately, the parties agreed that Seller would transfer LC Energy and the Mine to Purchaser in consideration for a payment by LC Energy to Purchaser of \$380,000 and an assignment to Purchaser of \$250,000 cash collateral currently securing the Bond while Purchaser would assume any and all clean-up and other remediation costs at the Mine whenever arising and all post-closing liabilities and indemnify Seller from all claims against it related thereto.

47. Subsequent to entering into the APA, in accordance with the Procedures Order, my team inquired whether the entity which had made the sole written offer was willing to submit a Qualified Bid (defined in the Bidding Procedures) for LC Energy and/ or its assets. The entity was unwilling to do so.

C. The Proposed Sale is in the Best Interests of the Receivership Estate

48. The transaction contemplated by the APA is, in my business judgment, in the best interests of LC Energy, the Receivership Estate and its stakeholders for several reasons:


- It avoids costly and uncertain litigation with Purchaser over the responsibility of clean-up and other remediation costs.
- It fixes the amount of remediation and clean-up costs for which the Receivership Estate is liable.
- It eliminates the costs to the Receivership Estate of maintaining the Mine; the last remaining recurring asset maintenance expense of the Receivership Estate.
- Purchaser and Quest have each agreed to indemnify LC Energy for any claim on

account of an assumed liability, thereby further protecting the Receivership Estate from future liabilities.

- It is the highest or otherwise best offer for LC Energy.

49. In light of the forgoing and the reasons set forth in my previous declaration in support of the Sale Motion and in the Memorandum of Law in Support of the Sale Motion, I respectfully request entry of an order approving the sale of LC Energy free and clear of all Encumbrances and granting me such other and further relief as this Court deems appropriate.

Executed this 26th day of August 2019, at New York, New York.



 Melanie L. Cyganowski

STATE OF NEW YORK)
) ss.:
 COUNTY OF NEW YORK)

On the 26th day of August, 2019, before me personally appeared Melanie Cyganowski, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity and by his signature on the instrument, the individual executed the instrument.



 Notary Public

ERIK BRADLEY WEINICK
 Notary Public, State of New York
 No. 02WE6304110
 Qualified in New York County
 Commission Expires 05/19/2022

EXHIBIT B

Proposed Sale Order

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

-----X	
SECURITIES AND EXCHANGE	:
COMMISSION,	:
	:
Plaintiff,	:
-v-	:
	:
PLATINUM MANAGEMENT (NY) LLC;	:
PLATINUM CREDIT MANAGEMENT, L.P.;	:
MARK NORDLICHT;	:
DAVID LEVY;	:
DANIEL SMALL;	:
URI LANDESMAN;	:
JOSEPH MANN;	:
JOSEPH SANFILIPPO; and	:
JEFFREY SHULSE,	:
	:
Defendants.	:
-----X	

No. 16-cv-6848 (BMC)

**[PROPOSED] ORDER APPROVING THE SALE OF THE ASSETS OF
LC ENERGY HOLDINGS LLC AND LC ENERGY OPERATIONS LLC FREE AND
CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS**

Upon the (1) motion (Docket No. 422) of Melanie L. Cyganowski, the duly appointed Receiver (the “*Receiver*”) of Platinum Credit Management, L.P., Platinum Partners Credit Opportunities Master Fund LP, Platinum Partners Credit Opportunities Fund (TE) LLC, Platinum Partners Credit Opportunities Fund LLC, Platinum Partners Credit Opportunities Fund (BL) LLC, Platinum Liquid Opportunity Management (NY) LLC, Platinum Partners Liquid Opportunity Fund (USA) L.P., Platinum Partners Liquid Opportunity Master Fund L.P., Platinum Partners Credit Opportunities Fund International Ltd and Platinum Partners Credit Opportunities Fund International (A) Ltd, (collectively, the “*Receivership Entities*”), for entry of an order (I) (a) authorizing the Receiver to sell (the “*Sale*”) the Receivership’s rights in and to LC Energy Holdings, LC Energy Operations LLC and/ or their assets (collectively, “*LC Energy*”) free and

clear of all liens, claims, encumbrances and other interests (collectively, “**Encumbrances**”); (b) authorizing the Receiver to enter into a stalking horse agreement and approving certain bid protections in connection therewith; (c) approving the form and manner of notice of the Sale; (d) approving certain procedures for the filing of claims against LC Energy and the resolution thereof and (e) approving bid procedures for the sale of LC Energy upon the selection of a stalking horse (the “**Bidding Procedures**”) and (II) approving the sale of LC Energy free and clear of all Encumbrances (the “**Sale Motion**”) and the accompanying Receiver’s Memorandum of Law in Support of the Sale Motion and the Declaration of Melanie L. Cyganowski, as Receiver, in Support of the Sale Motion, (2) the Receiver’s Reply Brief in Further Support of the Sale Motion (Docket No. 436), (3) the Declaration of Trey Rogers in Support of the Sale Motion (Docket No. 441), (4) the *Order (A) Authorizing the Receiver to Sell the Receivership’s Rights in and to LC Energy Operations LLC Free and Clear of All Liens, Claims, Encumbrances and Other Interests; (B) Approving Procedures for the Filing of Claims Against LC Energy and/ or its Assets and the Resolution thereof and (C) Granting Certain Related Relief* (the “**Procedures Order**”) (Docket No. 444), (5) the Notice of Successful Bidder For LC Energy Holdings LLC, LC Energy Operations LLC and their Respective Assets (Docket No. ____) and (6) the affidavit of the Receiver in further support of the Sale (the “**Cyganowski Affidavit**”) (Docket No. ____); and it appearing that the substantive relief requested in the Sale Motion is in the best interests of the Receiver, the Receivership Entities and their stakeholders; and this Court having jurisdiction to consider the relief requested in the Sale Motion pursuant to, *inter alia*, the October 16, 2017 *Second Amended Order Appointing Receiver*; and notice of the Sale Motion having been adequate

and appropriate under the circumstances; and after due deliberation and sufficient cause appearing therefor:¹

IT IS HEREBY FOUND AND DETERMINED THAT:

A. Compliance with Bidding Procedures. As established by the Cyganowski Affidavit in support of the Sale, LC Energy, through the Receiver, sufficiently and actively marketed its assets and conducted the sale process in compliance with the Procedures Order and afforded interested purchasers a full and fair opportunity to make higher and better offers consistent with the Procedures Order. In accordance with the Procedures Order, the Receiver determined that ERC Mining Indiana Corp. (“*Purchaser*”) is the Successful Bidder (as defined in the Procedures Order). The Receiver’s determination that the Successful Bidder submitted the highest or otherwise best offer for the LC Energy Assets constitutes a valid and sound exercise of the Receiver’s business judgment.

B. Notice. As evidenced by the pleadings filed in support of the Sale Motion, (i) proper, timely, adequate and sufficient notice of the Sale Motion was provided. Publication solely in Greene and Sullivan Counties, Indiana was sufficient and proper. and (ii) no other or further notice of the Sale Motion is or shall be required.

C. Opportunity to Object. A fair and reasonable opportunity to object and to be heard with respect to the Sale was given to all interested persons and entities, including those entities listed on the LC Energy Service List.

D. Sale in Best Interest. Under the circumstances, the sale of the LC Energy assets to Purchaser and Purchaser’s assumption of LC Energy’s liabilities (the “*Sale Transaction*”) is in

¹ All capitalized terms not otherwise defined herein shall have the meaning ascribed to such term in the Sale Motion, the Cyganowski Affidavit or the APA, as applicable.

the best interests of Seller, the Receivership Entities and their estate (the “*Receivership Estate*”). Entry into the APA and the consummation of the transactions contemplated therein constitutes the Receiver’s exercise of sound business judgment, and such acts are in the best interests of Seller, the Receivership Entities and the Receivership Estate. The Court finds that the Receiver has articulated good and sufficient business reasons justifying the Sale Transaction.

E. Arms-Length Sale. The APA was negotiated and accepted by Seller and Purchaser without collusion, in good faith, and from arm’s length bargaining positions.

F. Free and Clear. Seller may sell the LC Energy assets free and clear of all Encumbrances.

G. Prompt Consummation. The sale of LC Energy’s assets must be approved and consummated promptly in order to preserve the value of the LC Energy assets. Therefore, time is of the essence in consummating the Sale Transaction, and Seller and Purchaser intend to close the Sale Transaction as soon as reasonably practicable (the “*Closing Date*”). The Receiver has demonstrated compelling circumstances and a good, sufficient and sound business purpose and justification for the immediate approval and consummation of the Sale Transaction.

H. Consideration Fair and Reasonable. The consideration provided by Purchaser for the LC Energy assets and the assumption of all liabilities (i) is fair and reasonable and (ii) is the highest or otherwise best offer for LC Energy.

I. Legal Valid Transfer. The transfer of LC Energy’s assets to Purchaser will be a legal, valid, and effective transfer of the assets and will vest Purchaser with all right, title and interest of Seller to LC Energy’s assets free and clear of all Encumbrances as set forth in the APA.

J. Legal and Factual Basis. The findings of fact in this Order shall be construed as conclusions of law, and the conclusions of law in this Order shall be construed as findings of fact, to the fullest extent of the law.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

1. The substantive relief requested in the Sale Motion is GRANTED as provided herein.

2. All objections to the relief provided for herein that have not been withdrawn, waived or settled, and all reservations of rights included therein, are hereby overruled and denied on the merits.

3. The Sale Transaction is hereby approved and the Receiver is authorized to close under the APA.

4. The transfer of LC Energy's assets to Purchaser shall be, and hereby is, free and clear of all Encumbrances.

5. On the Closing Date, this Order will be construed, and constitute for any and all purposes, a full and complete general assignment, conveyance and transfer of assets set forth in the APA (the "*LC Energy Assets*") transferring good and marketable title in such LC Energy Assets to Purchaser. All federal, state, and local governmental agencies or departments are hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the Sale Transaction.

6. All entities who are presently, or on the Closing Date may be, in possession of some or all of the LC Energy Assets are hereby directed to surrender possession of the LC Energy Assets to Purchaser on the Closing Date.

7. All persons and entities are prohibited and enjoined from taking any action to adversely affect or interfere with the ability of LC Energy and/ or the Receiver to transfer the LC Energy Assets to Purchaser in accordance with the APA and this Order; provided, however, that the foregoing restriction shall not prevent any party from appealing this Order in accordance with applicable law or opposing any appeal of this Order.

8. Effective upon Closing, except for rights and obligations set forth in the APA, for good and valuable consideration, receipt of which is acknowledged in the APA, Quest and Purchaser, and their respective agents, representatives, heirs, successors, assigns and direct and indirect parents, subsidiaries, affiliates and professionals (collectively, the “Purchaser Releasors”) fully release and discharge Credit Funding LLC, Seller, the Receiver and the Receivership Entities and their respective agents, representatives, heirs, successors, assigns and direct and indirect parents, subsidiaries, affiliates and professionals (collectively, the “Receiver Releasees”) from any and all claims, liens, actions, causes of action, suits, debts, guarantees, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law, admiralty or equity, known or unknown, which, against the Receiver Releasees, the Purchaser Releasors ever had, now have, or hereafter can, shall, or may have, for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world to this day. Purchaser Releasors acknowledge that new or different facts in addition to, or different from, those now known or believed to be true may be discovered. Notwithstanding that knowledge, and being fully advised, the Purchaser Releasors expressly waive and relinquish any and all provisions, rights, and benefits conferred by California Civil

Code § 1542 or any law of any state or territory of the United States or any principle of common law that is similar, comparable, or equivalent to California Civil Code § 1542.

9. Effective upon Closing, except for rights and obligations set forth in the APA, for good and valuable consideration, receipt of which is acknowledged in the APA, Credit Funding LLC, Seller, the Receiver and the Receivership Entities, and their respective agents, representatives, heirs, successors, assigns and direct and indirect parents, subsidiaries, affiliates and professionals (collectively, the “Receiver Releasors”) hereby fully release and discharge Purchaser and Quest, and their respective agents, representatives, heirs, successors, assigns and direct and indirect parents, subsidiaries, affiliates and professionals (collectively, the “Purchaser Releasees”) from any and all claims, liens, actions, causes of action, suits, debts, guarantees, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever, in law, admiralty or equity, known or unknown, which, against the Purchaser Releasees, the Receiver Releasors ever had, now have, or hereafter can, shall, or may have, for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world to this day. Receiver Releasors acknowledge that new or different facts in addition to, or different from, those now known or believed to be true may be discovered. Notwithstanding that knowledge, and being fully advised, the Receiver Releasors expressly waive and relinquish any and all provisions, rights, and benefits conferred by California Civil Code § 1542 or any law of any state or territory of the United States or any principle of common law that is similar, comparable, or equivalent to California Civil Code § 1542.

10. Effective upon Closing, the claims filed against LC Energy that were to be adjudicated in accordance with the Procedures Order, are moot in light of the lack of proceeds from the sale of LC Energy, and as such, are dismissed.

11. The consideration provided by Purchaser for the LC Energy Assets shall be deemed to constitute reasonably equivalent value and fair consideration under the laws of the United States, any state, territory, possession, or the District of Columbia.

12. The Receiver shall cooperate with Purchaser and Purchaser shall cooperate with the Receiver, in each case to ensure that the Sale Transaction is consummated and the Receiver is hereby authorized to make such modifications or supplements to any bill of sale or other document executed in connection with the APA to facilitate its consummation as contemplated by the APA.

13. The terms and provisions of the Procedures Orders and this Order shall be binding in all respects upon and shall inure to the benefit of the Receiver and the Receivership Estate, and Purchaser, and their respective successors and assigns, and any affected third parties.

14. The APA and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto, in a writing signed by both parties, and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Receivership Estate.

15. To the extent that any provision of the APA conflicts with or is, in any way, inconsistent with any provision of this Order, this Order shall govern and control.

16. Other than any contracts, agreements and/ or leases (collectively, “*Agreements*”) by and between any contract counterparty and LC Energy assigned to the Purchaser under the

APA, all Agreements by and between any contract counterparty and LC Energy are hereby deemed terminated and of no further force or effect. Any property leased to LC Energy under such Agreements is hereby deemed to revert to its lawful owner without the need for any further documentation.

17. The provisions of this Order are nonseverable and mutually dependent.

18. This Order shall be effective immediately upon its entry and the Receiver is authorized to close the sale immediately upon entry of this Order.

19. The Receiver is authorized to execute and deliver all instruments and documents and take such other action as may be necessary or appropriate to implement and effectuate the transactions contemplated by this Order.

20. This Court shall retain jurisdiction to enforce and implement the terms and provisions of this Order, the APA, all amendments thereto, any waivers and consents thereunder, and of each of the agreements executed in connections therewith in all respects.

Dated: _____, 2019
Brooklyn, New York

THE HON. BRIAN M. COGAN
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK