UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

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In re:	**Jointly Administered under Case No. 15-50307**
MAGNETATION LLC, et al,	Court File No. 15-50307 (WJF)
Debtors.	
(includes:	Court File Nos.:
Mag Lands, LLC	15-50308 (WJF)
Mag Finance Corp.	15-50309 (WJF)
Mag Mining, LLC	15-50310 (WJF)
Mag Pellet LLC)	15-50311 (WJF)
	Chapter 11 Cases Judge William J. Fisher

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NOTICE OF HEARING AND JOINT MOTION FOR AN ORDER (i) GRANTING EXPEDITED RELIEF, (ii) APPROVING THE SALE AND TRANSFER OF CERTAIN ASSETS AND LIABILITIES FREE AND CLEAR OF ENCUMBRANCES, (iii) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION THEREWITH AND (iv) GRANTING RELATED RELIEF

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TO: The parties in interest as specified in Local Rule 9013-3(a)(2).

1. Magnetation LLC and its subsidiaries that are debtors and debtors in possession in these proceedings (collectively, the "**Debtors**") by this motion (this "**Motion**") move this Court for the relief requested below and give notice of hearing.

2. The Court will hold a hearing on the Motion at 1:00 p.m. (Central Time) on December 15, 2016 in Courtroom No. 2B, U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota 55101.

3. Any response to this Motion must be filed and served not later than 12:00 p.m. (Central time) on December 13, 2016. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING**.

4. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334, Rule 5005 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") and Local Rules 1070-1 and 1073-1. This is a core proceeding pursuant to 28 U.S.C. § 157(b) and may be determined by this Court. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. On May 5, 2015 (the "**Petition Date**"), each of the above-captioned Debtors commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq*. (the "**Bankruptcy Code**"). The Debtors' cases are being jointly administered pursuant to Bankruptcy Rule 1015(b).

5. This Motion arises under sections 105(a), 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006 and 9013. This Motion is filed under Local Rules 9013-1, 9013-2 and 9013-3. Notice of the hearing on this Motion is provided pursuant to Bankruptcy Rules 2002(a) and 9013 and Local Rules 2002-1(b), 6004-1(e), 9013-2 and 9013-3. By this Motion, the Debtors seek entry of an order, substantially in the form attached hereto as Exhibit 1 ("**Proposed Order**"): (i) authorizing entry into and performance under an asset purchase agreement by and among the Debtors, MG Initial Purchaser, LLC (the "**Initial Buyer**"), and ERP Iron Ore, LLC ("**ERP**"), substantially in the form attached to the Proposed Order as Exhibit A (the "**APA**"); (ii) approving the sale and transfer of the Debtors' assets and liabilities in accordance with the APA (the "**Sale**"); and (iii) authorizing the assumption and assignment of certain executory contracts and unexpired leases in connection with the Sale.

BACKGROUND

6. Information about the Debtors' businesses and the events leading up to the Petition Date can be found in the *Declaration of Joseph A. Broking in Support of the Debtors' Chapter 11 Petitions and First Day Motions*, filed on May 5, 2015, ECF No. 8, which is incorporated herein by reference

7. Since the Petition Date, the Debtors worked diligently to restructure their operations and finances. Among other things, the Debtors successfully rejected economically unfavorable executory contracts and unexpired leases, streamlined operations and, most significantly, Debtor Mag Pellet LLC assumed its executory contract with AK Steel Corporation ("**AK Steel**") for the purchase and sale or iron ore pellets (the "**PPA**"). However, throughout these cases, the Debtors had to contend with a challenging iron ore market and the expense and delays caused by litigation with respect to the PPA.

8. In order to successfully conclude their chapter 11 cases, the Debtors continued to evolve their restructuring strategy to maximize value for the estates and began to explore various alternatives, including a sale of substantially all of their assets. Starting in January 2016, the Debtors and their investment bank, PJT Partners LP ("**PJT**") began to identify and negotiate with potential third-party investors or purchasers that could support a restructuring and provided (subject to nondisclosure agreements ("**NDAs**")) numerous interested parties with access to the Debtors' management and various diligence materials. By the end of September, PJT had contacted 44 potential purchasers, including private-equity firms, hedge funds, major mining and metals holding and investment companies and strategic purchasers, and 26 of those parties had entered into NDAs. The Debtors provided many of these parties with diligence, engaged in both high-level and detailed discussions regarding their businesses and potential transactions,

arranged and participated in in-person site visits, and granted various parties broad access to the Debtors' management and their advisors.

9. On June 15, 2016, in the midst of the Debtors' efforts to identify a third-party purchaser, AK Steel and the lenders party to that certain revolving credit agreement dated May 20, 2013, as amended, supplemented or otherwise modified from time to time, among Magnetation LLC, as borrower, and Mag Lands, LLC, Mag Finance Corp., Mag Mining, LLC and Mag Pellet as guarantors, and JP Morgan Chase Bank, N.A., in its capacity as administrative agent (the "**Prepetition Revolving Agent**") for the lenders party thereto from time to time (the "**Prepetition Revolving Lenders**") (who held an approximately $65 million claim, secured by a first priority lien on substantially all of the Debtors' assets) submitted a proposal to the Debtors that would bring significant value to the estates in connection with a settlement of the numerous disputes among AK Steel and the Debtors (the "**Proposal**"). The Proposal contemplated satisfying the Prepetition Revolving Lenders' claims, settling all of the parties' outstanding litigation, terminating the PPA, funding the organized winding down of the Debtors' businesses to minimize administrative expenses, and allowing the Debtors' remaining assets to be sold in an orderly fashion for the benefit of the estates' creditors. Although the Debtors much preferred to find a third-party purchaser that would permit emergence as a going concern, the Debtors, in accordance with their fiduciary duties to maximize value for the estates, undertook to evaluate the Proposal with their advisors and began negotiations.

10. Between mid-June and early-August 2016, the Debtors and their advisors participated in arms'-length and hard-fought negotiations over the terms of the Proposal. At the same time, the Debtors continued to pursue alternative value-maximizing transactions in hopes that they could avoid entering into an agreement to wind down their businesses. In early

August, the Prepetition Revolving Agent made clear that the Prepetition Revolving Lenders were gravely concerned that the Debtors would burn through all of their cash and that an agreement needed to be reached soon to protect the Prepetition Revolving Lenders' collateral. Without an alternative transaction, the Debtors intensified their negotiation efforts in order to avoid a freefall liquidation.

11. After more than two months of negotiations with the Prepetition Revolving Lenders and AK Steel, while simultaneously seeking a third party purchaser to no avail, the Debtors reached an agreement in principle with AK Steel and the Prepetition Revolving Lenders. The Debtors thereafter approached Magnetation, Inc. ("**Mag Inc.**"), the Debtors' 50.1% owner and provider of the Debtors' technology and management services and personnel, in order to obtain a global resolution that would ensure that the Proposal would maximize value for the estates. On August 26, 2016, the Debtors entered into the Global Settlement Agreement by and among (i) each of the Debtors, (ii) AK Steel, (iii) the Prepetition Revolving Agent, (iv) the Prepetition Revolving Lenders and (v) Mag Inc. (the "**GSA**"), and filed the *Debtors' Joint Combined Motion for an Order (i) Approving Global Settlement Agreement, (ii) Authorizing the Debtors to Wind Down Their Businesses, (iii) Authorizing the Debtors to Transfer Certain Assets, (iv) Approving Wind-Down Incentive and Retention Plan, (v) Approving Asset Sales Procedures, (vi) Approving Abandonment Procedures, (vii) Approving Contract Rejection Procedures, and (viii) Waiving Compliance with Local Rule 9013-2(a)* [ECF No. 887] (the "**Wind-down Motion**").

12. The Debtors did not, however, stop their relentless search for a potential alternative transaction when they entered the GSA and filed the Wind-down Motion. Consistent with their hard-won rights under the GSA, the Debtors continued to engage with third

parties, including by providing diligence, participating in numerous meetings and teleconferences, conducting site visits, and pursuing favorable settlements with creditors in an effort to reduce the amount of cash needed to close a transaction and fund emergence.

13. The Debtors' tireless nine-month long marketing process yielded proposals from four interested parties. The Debtors negotiated with these potential acquirers, and exchanged term sheets. However, after some discussions regarding potential terms for a transaction, a lack of committed financing and multiple contingencies, including the Debtors' strained relationship with their only customer, AK Steel and the ongoing litigation related to the PPA and the assumption thereof, prohibited any deal from being reached. The Debtors did everything in their power to secure a going-concern transaction such that they could abandon the GSA. Ultimately, no party offered a bona fide proposal that the Debtors reasonably believed in good faith could be consummated in accordance with the Bankruptcy Code and other applicable law, and the GSA offered the highest and best economic recovery available for the Debtors' estates.

14. On October 6, 2016, after a day-long evidentiary hearing, the Court entered an order approving, among other things, the GSA (including certain amendments thereto, as reflected in such order), the wind-down of the Debtors' operations, the transfer of accounts receivable and inventory to AK Steel and the termination of the PPA [ECF No. 1004] (the "**GSA Order**"), and on October 7, 2016, the parties to the GSA consummated the transactions contemplated to be effectuated on the Effective Date (as defined in the GSA).

The Proposed Sale of the Remaining Assets[1]

15. The GSA contemplates that the Debtors will sell their remaining assets and distribute proceeds thereof in accordance with the GSA Order. In connection with resolving an objection to the GSA by an ad hoc group of the Debtors' senior secured noteholders (the "**Ad Hoc Group**"), the parties to the GSA, including the Debtors, agreed that, provided that the Prepetition Revolving Agent has been paid in full as contemplated by the GSA,[2] they would (i) support a credit bid for the Debtors' remaining assets under that certain Senior Secured Notes Indenture, dated as of May 20, 2013, among Magnetation LLC, Mag Finance Corp., the subsidiary guarantors listed thereunder, Wilmington Trust National Association ("**Wilmington Trust**"), as trustee and collateral agent (the "**Indenture Trustee**"), and solely with respect to Section 10.10(a) thereof, AK Steel, and Mag Inc., as amended, restated, supplemented or otherwise modified from time to time (the "**Indenture**") and/or that certain Debtor-in-Possession Credit Agreement, dated as of May 7, 2015, by and among the Debtors, the lenders party thereto and Wilmington Trust, as administrative agent (the "**DIP Agent**"), as amended, modified and supplemented from time to time (the "**DIP Credit Agreement**"), (ii) support an expedited sale process and (iii) proceed expediently to closing such sale.

16. Shortly after the hearing on the GSA, the Debtors, Mag Inc., the DIP Agent, the Ad Hoc Group and ERP began negotiating a proposed asset purchase agreement. Simultaneously, the Debtors contacted and were contacted by various other parties that expressed interest in purchasing the remaining assets, including liquidation service providers and

[1] This summary of the Sale is qualified in its entirety by reference to the APA. To the extent that there is any discrepancy between the terms contained in this Motion and those set forth in the APA, the terms of the APA shall control. Unless otherwise defined herein, capitalized terms used in this summary shall have the meanings ascribed to such terms in the APA.

[2] In connection with the settlement of the Ad Hoc Group's objection, AK Steel agreed to waive any distributions from the proceeds of the sale of the Debtors' assets, with such proceeds to instead be made to the Indenture Trustee or the DIP Agent, as applicable.

auctioneers. To date, the Debtors have not received a higher or better offer than that presented by ERP, and ERP has expressed that it intends to restart the Debtors' operations in the future, which could translate to the generation of jobs and a source of business for local vendors. Accordingly, the Debtors determined that the APA was in the best interests of the Debtors' estates, and on December 6, 2016, the parties executed the APA.

17. The APA contemplates that the DIP Agent will credit bid $22.5 million of its allowed claims secured by the assets proposed to be purchased pursuant to section 363(k) of the Bankruptcy Code and applicable nonbankruptcy law and in accordance with the applicable provisions of the DIP Credit Agreement. The DIP Agent formed the Initial Buyer and contributed $22.5 million of allowed secured claims to it in order to credit bid, and the Initial Buyer will then transfer its rights and obligations under the APA to ERP in exchange for $22.5 million of notes issued by ERP and secured by collateral of ERP and certain collateral of an affiliate of ERP, and guaranteed by such affiliate and certain individuals.[3]

18. ERP will represent and warrant to the Debtors with respect to the representations and warranties set forth in Article 4 of the APA, as well as with respect to the ability of ERP to satisfy the conditions contained in sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code with respect to the contracts and leases being assumed pursuant to the APA, and the Debtors will release and discharge the Initial Buyer and its affiliates from all liabilities, covenants, undertakings, obligations and duties save its obligations under Sections 6.03 and 11.01 of the APA or with respect to the release of the obligations credit bid at Closing.

19. The Purchased Assets consist of the Debtors' rights, title and interests in substantially all of the Debtors' assets, other than certain Excluded Assets, which include

[3] ERP is the true purchaser, and, thus, the findings of fact and conclusions of law in the Sale Order will be also for the benefit of ERP.

Avoidance Actions and proceeds thereof, Wind-down Cash, assets transferred or proposed to be transferred pursuant to the GSA and certain Contracts and Leases that will be not be assumed and assigned. The Buyer will assume, among other liabilities, Cure Costs, including certain unpaid royalties and taxes, all of the Debtors' liabilities arising after the closing of the Sale under Assumed Contracts and Assumed Leases, and all of the Debtors' liabilities pursuant to Environmental Law attributable to Transferred Permits/Licenses arising out of or relating to environmental cleanup costs and compliance at sites owned by the Buyer after Closing and any Hazardous Materials released, stored, deposited or disposed of in connection with the operation of the Purchased Assets, in each case, other than Excluded Pre-Closing Fines.

20. Mag Inc. and its affiliate MagGlobal, LLC (together, "**Mag Entities**") and the non-Debtor parties to the APA have entered into a support agreement pursuant to which certain transactions contemplated by the GSA will be effected, and Mag Inc. has agreed to grant ERP (and its successors) a non-exclusive, perpetual, royalty-free (other than certain pass-through royalties) license for all of the Licensed Technology, which the Debtors are currently using or have ever used in the operation of their businesses, which will be effectuated through a Restated and Amended Technology License Agreement that the Debtors will assign to Buyer pursuant to the APA.

21. The APA contemplates that that certain promissory note dated October 4, 2011 made by Mag Inc. in favor of the Company, as amended on March 6, 2013 and as amended, supplemented or otherwise modified from time to time in accordance with the terms thereof, the principal balance of which as of the date of this Motion is in excess of $17 million (the "**Intercompany Note**") will be included in the Purchased Assets. Pursuant to the Mag Entities Support Agreement, the Buyer undertakes to cancel the Intercompany Note. The Restated and

Amended Technology License Agreement is subject to termination if either the Buyer does not cancel and release the Intercompany Note or the Sale Order does not provide that (1) the Initial Buyer confirms it has no right, title, or interest in the Intercompany Note, and in the event any such right, title, or interest may exist, disclaims any right, title, or interest in the Intercompany Note, and (2) the Debtors disclaim any right, title, or interest in the Intercompany Note at Closing.

22. The obligations of the parties to the APA to consummate the Sale will be subject to the satisfaction of, among others, the following conditions: (i) the Court shall have entered the Sale Order, (ii) all representations and warranties of the Debtors contained in the APA (other than Fundamental Representations) shall be true and correct in all material respects on and as of the Effective Date and the Closing Date, as though made on and as of such date subject to a Material Adverse Effect qualifier; (iii) all Fundamental Representations of the Debtors contained in the APA shall be true and correct in all material respects on and as of the Effective Date and the Closing Date, as though made on and as of such date; (iv) the Deferred Payment Amount shall have been satisfied in cash in full, (v) the Purchased Assets shall include at least $1,750,000 of unrestricted cash; (vi) the Debtors, the Initial Buyer and ERP shall have executed the ERP Assumption; (vii) ERP shall have issued and delivered the ERP Notes; (viii) the Mag Entities Support Agreement shall be in full force and effect; (ix) the Restated and Amended Technology License Agreement shall be in full force and effect and have been assigned to the Buyer in the Sale Order; and (x) there shall have been no Material Adverse Effect.

23. The Sale is also conditioned on certain transactions among ERP and certain third parties. Specifically, ERP shall have entered into certain definitive agreements with mechanic's

and miner's lien claimants (the "**Lien Claimants**"), Caterpillar Financial Services Corporation and Progress Rail Leasing and the State of Minnesota.

24. The Lien Claimants include certain parties that have asserted liens on the Debtors' assets and asserted that such liens are senior in priority to the liens of the DIP Agent. In order to try and avoid the expense and delay of litigation as to whether the DIP Agent could credit bid for such assets, ERP has agreed, subject to definitive documentation, to provide certain Lien Claimants with a promissory note executed by ERP and FerroMagnetica, LLC[4] jointly and severally, for the face amount of the principal amount of all unpaid mechanic's/miner's lien claims of each of those Lien Claimants and pre-settlement legal fees and costs of each of those Lien Claimants, which note will be secured by a security interest in the Purchased Assets. The parties are currently negotiating revisions to the Proposed Order to effectuate that non-binding agreement, subject to definitive documentation, and hope to finalize those revisions prior to the deadline to object to the Motion to avoid needless litigation and resolve any of the Lien Claimants' concerns surrounding the APA and the Sale prior to the hearing on the Motion.

25. The parties are also in ongoing good faith discussions with Caterpillar Financial Services Corporation and Progress Rail Leasing and the State of Minnesota on terms of mutually acceptable agreements.

26. In addition to customary termination rights for transactions of this nature, the Debtors or the Buyer may terminate this APA if the Sale is not closed by December 30, 2016, and the Buyer may terminate the APA if the Sale Order is not entered by December 16, 2016.

[4] FerroMagnetica, LLC is a third party, owned by EETAC Syndicate LTD. (US), LLC ("**EETAC**"), that may invest in ERP Iron Ore. That investment will only occur post-Closing, if at all, and contemplates a change in control of ERP Iron Ore. The Debtors understand that FerroMagnetica, LLC may provide MagGlobal LLC or its affiliates, including Mag Inc., a minority share of the interests therein, again as part of a separate transaction. Neither of these transactions is a condition to the Closing of the Sale.

27. Importantly, the Debtors are not precluded from responding to third parties regarding an Alternative Transaction, and may terminate the APA if an Alternative Transaction is approved.

NOTICE OF THE SALE

28. The Debtors have served notice of this Motion upon the following parties: (i) the Office of the United States Trustee for the District of Minnesota; (ii) counsel for the Prepetition Revolving Agent, Simpson Thacher & Bartlett LLP, 425 Lexington Avenue, New York, NY 10017, Attn: Sandy Qusba, (squsba@stblaw.com) and Kathrine A. McLendon, (kmclendon@stblaw.com); (iii) counsel for the Ad Hoc Group, Milbank, Tweed, Hadley & McCloy LLP, 28 Liberty Street, New York, NY, 10005, Attn: Dennis F. Dunne (ddunne@milbank.com) and Evan R. Fleck (efleck@milbank.com); (iv) counsel for the Official Committee of Unsecured Creditors, Cooley LLP, 1114 Avenue of the Americas, New York, NY 10036, Attn: Cathy Hershcopf (chershcopf@cooley.com) and Seth Van Aalten (svanaalten@cooley.com); (v) all entities that assert any Encumbrance in the Purchased Assets; (vi) all parties to the Contracts and Leases to be assumed and assigned pursuant to the APA; (vii) all governmental taxing authorities that have or as a result of the Sale of the Purchased Assets may have claims, contingent or otherwise, against the Debtors; (viii) all federal, state, and local taxing authorities having jurisdiction over any of the Purchased Assets, including the Internal Revenue Service; (ix) all federal, state, and local governmental agencies and environmental agencies in any jurisdiction where the Debtors own or have owned or used real property; (x) the Environmental Protection Agency; (xi) all parties that filed requests for notices under Bankruptcy Rule 9010(b) or were entitled to notice under Bankruptcy Rule 2002; (xii) all known creditors (whether liquidated, contingent or unmatured) of the Debtors, or other Persons named in the Debtors' schedules filed with the Court; (xiii) all interested governmental, pension,

environmental, and other regulatory entities; (xiv) the Office of the Attorney General of Minnesota; (xv) the Office of the Attorney General of Indiana; (xvi) any other applicable state attorneys general; (xvii) the Office of the United States Trustee for the District of Minnesota; and (xviii) the United States Department of Justice. The Debtors submit that such notice is reasonably calculated to provide all interested parties with timely and proper notice of the proposed Sale, including the date, time and place of the hearing on this Motion. The Debtors respectfully request that the Court waive and dispense with any other notice that may be required pursuant to any Bankruptcy Rule or Local Bankruptcy Rule.

Proposed Assumptions and Assignments

29. Attached to this Motion as Exhibit 2[5] is a schedule setting forth the contracts and/or leases proposed to be assumed and assigned upon closing of the Sale (the "**Assumed Contracts and Assumed Leases**") and the amount, if any, determined by the Debtors to be necessary to be paid to cure any existing default in accordance with sections 365(b) and 365(f)(2) of the Bankruptcy Code (the "**Cure Amount**"). The Debtors have served notice thereof on each non-debtor party to each such proposed Assumed Contract and Assumed Lease ("**Counterparty**") by facsimile, electronic transmission, hand delivery or overnight mail (the "**Notice of Assumption and Assignment**"), subject to the right to withdraw or defer such request for assumption and assignment prior to the consummation of the Sale. Such notice included a statement as to the Buyer's ability to perform the applicable Debtors' obligations under such contract and/or lease and the deadline for any objections to the proposed assumption and assignment and Cure Amount. The Debtors submit that such notice is reasonably calculated to provide all interested parties with good, timely, adequate, sufficient and proper

[5] The presence of any contract or lease on such schedule does not constitute an admission that such contract or lease is an executory contract or unexpired lease.

notice of the proposed assumption and assignment of contracts and leases, the proposed Cure Amounts relating thereto; and the rights, procedures and deadlines for objecting thereto.

30. Objections to any proposed assumption and assignment, including any Cure Amount, must: (a) be in writing; (b) conform to the applicable provisions of the Bankruptcy Rules and the Local Bankruptcy Rules; (c) state with particularity the legal and factual basis for the objection and the specific grounds therefor; and (d) be filed with the Court and served by 12:00 p.m. (Central time) on December 13, 2016 on: (i) counsel for the Debtors, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY 10017, Attn: Marshall S. Huebner (marshall.huebner@davispolk.com) and Michelle M. McGreal (michelle.mcgreal@davispolk.com); (ii) counsel for the Prepetition Revolving Agent , Simpson Thacher & Bartlett LLP, 425 Lexington Avenue, New York, NY 10017, Attn: Sandy Qusba (squsba@stblaw.com) and Kathrine A. McLendon (kmclendon@stblaw.com); (iii) counsel for the Ad Hoc Committee of Senior Secured Noteholders, Milbank, Tweed, Hadley & McCloy LLP, 28 Liberty Street, New York, NY, 10005, Attn: Dennis F. Dunne (ddunne@milbank.com) and Evan R. Fleck (efleck@milbank.com); (iv) counsel for the Official Committee of Unsecured Creditors, Cooley LLP, 1114 Avenue of the Americas, New York, NY 10036, Attn: Cathy Hershcopf (chershcopf@cooley.com) and Seth Van Aalten (svanaalten@cooley.com); (v) counsel for ERP Iron Ore, Dentons US LLP, 1221 Avenue of the Americas, New York, NY 10020, Attn: Oscar N. Pinkas (oscar.pinkas@dentons.com); and (vi) the Office of the United States Trustee, 300 South Fourth Street, #1015, Minneapolis, MN 55415, Attn: Sarah J. Wencil (Sarah.J.Wencil@usdoj.gov). A properly filed and served objection will reserve such objecting party's rights against the Debtors with respect to the relevant assumption and assignment and/or Cure Amount, but will not constitute an objection to the remaining relief requested in this

Motion. If any objection to the proposed assumption and assignment and/or Cure Amount is timely filed, a hearing with respect to such objection will be held at the hearing on the Sale; *provided* that a hearing regarding the Cure Amount, if any, may be continued until after the closing of the Sale.

31. The Debtors request that any party that fails to file an objection to the proposed assumption and assignment of any Assumed Contract or Assumed Lease shall be forever barred from filing any objection thereto, including (i) making any demands for additional cure amounts or monetary compensation on account of any alleged defaults against the Buyer, Debtors or their estates, (ii) asserting that the assignee of such contract or lease has not provided adequate assurances of future performance and (iii) asserting that the assignment is subject to any anti-alienation provision or other restriction on assignment.

32. ERP Iron Ore has reserved the ability to designate contracts and leases for assumption and assignment at any time prior to thirty days after the closing of the Sale. Thus, the Debtors may remove certain contracts and leases from Exhibit 2 and adjourn the hearing on assumption and assignment of such Assumed Contracts or Assumed Leases.

Request for Waiver of Stay

33. In addition, by this Motion, the Debtors seek a waiver of any stay of the effectiveness of the Order approving this Motion pursuant to any applicable Bankruptcy Rule or Local Bankruptcy Rule. Specifically, pursuant to Bankruptcy Rule 6004(h), "[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" , and pursuant to Bankruptcy Rule 6006(d), "[a]n order authorizing the trustee to assign an executory contract or unexpired lease under § 365(f) is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise." The Debtors require immediate relief in order to

move forward expeditiously with the Sale and maximize the value of their estates. Accordingly, the Debtors submit that ample cause exists to justify a waiver of the 14-day stay imposed by Bankruptcy Rules 6004(h) and 6006(d) and any other applicable Bankruptcy Rule or Local Bankruptcy Rule or otherwise applicable law, to the extent that it applies.

REQUEST FOR EXPEDITED RELIEF

34. The Debtors request expedited relief on this Motion. The Debtors believe they need to obtain approval of and close the Sale as promptly as possible. ERP has conditioned its obligations under the APA on the entry of the Sale Order by December 16, 2016, and the occurrence of a closing by December 30, 2016, and the Debtors have not received any higher or better offer or any actionable proposal that would allow the Debtors the opportunity to continue operations as a going concern. Moreover, the Debtors continue to incur costs in connection with maintaining the remaining assets. Thus, the sooner the Debtors are able to sell the remaining assets, the more value they can preserve for the estates. Accordingly, the Debtors seek to have the Motion heard on December 15, 2016.

35. As noted above, the Debtors agreed to set the objection deadline as noon on December 13, two days before the hearing, and will serve notice promptly on the parties listed above. Additionally, since August 26, 2016, parties were aware that the Debtors were contemplating a shutdown and sale of their assets, and, on October 4, 2016, the Debtors and the Ad Hoc Group publicly announced that they were working on a credit bid for the Debtors' remaining assets.

36. Pursuant to Local Rule 9013-2, this Motion is verified and is accompanied by a memorandum of law and proposed order.

NO PRIOR REQUEST

37. No prior request for the relief sought herein has been made to this Court or any other court.

WHEREFORE, the Debtors request entry of an order:

A. granting expedited relief;

B. authorizing entry into and performance under the APA and the Restated and Amended Technology License Agreement;

C. approving the sale and transfer of the Debtors' assets and liabilities in accordance with the APA;

D. authorizing the assumption and assignment of certain executory contracts and unexpired leases in connection with the Sale;

E. finding that the APA and the transactions contemplated therein and associated therewith were negotiated, proposed, and entered into by the Debtors, the Credit Bidding Parties, and the Buyer (and the holders of interests in the Buyer) without collusion, in good faith, and from arm's-length bargaining positions, and that the Sale may not be avoided pursuant to Bankruptcy Code section 363(n);

F. finding that the Sale is exempt from state sales and use tax or similar taxes, no bulk sales law or similar law shall apply in any way to the transactions contemplated by the Sale or the APA, and no withholding of U.S. federal income tax pursuant to Sections 1441 or 1442 of the Internal Revenue Code is required;

G. waiving any stay, including pursuant to Bankruptcy Rules 6004(h) and 6006(d); and

H. granting such other relief as the Court deems just and equitable.

Dated: December 6, 2016

DAVIS POLK & WARDWELL LLP

/s/ Michelle M. McGreal

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Local Counsel to the Debtors
and Debtors in Possession

NOTICE OF WITNESSES

The Debtors hereby give notice that they may, if necessary, call Michael J. Talarico, Chief Restructuring Officer of Magnetation LLC and an authorized representative of the Debtors, to testify at the hearing on the preceding Motion regarding certain facts set forth herein. The witness's business address is 102 NE 3rd Street, Suite 120, Grand Rapids, Minnesota 55744.

The Debtors hereby give notice that they may, if necessary, call Mark Buschmann, Partner in the Restructuring and Special Situations Group at PJT Partners LP, to testify at the hearing on the preceding Motion regarding certain facts set forth herein. The witness's business address is 280 Park Avenue, New York, NY 10017.

VERIFICATION

I, Michael J. Talarico, on behalf of the Debtors and Debtors in Possession, the moving parties named in the *Debtors' Joint Motion for an Order (i) Approving the Sale and Transfer of Certain Assets Free and Clear of Encumbrances, (ii) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection Therewith, and (iii) Granting Related Relief*, declare under penalty of perjury that the facts set forth in the preceding Motion are true and correct, according to the best of my knowledge, information, and belief.

Dated: December 6, 2016

Signed: Michael J. Talarico

Michael J. Talarico
Chief Restructuring Officer

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

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In re:	**Jointly Administered under Case No. 15-50307**
MAGNETATION LLC, et al,	Court File No. 15-50307 (WJF)
Debtors.	
(includes:	Court File Nos.:
Mag Lands, LLC	15-50308 (WJF)
Mag Finance Corp.	15-50309 (WJF)
Mag Mining, LLC	15-50310 (WJF)
Mag Pellet LLC)	15-50311 (WJF)
	Chapter 11 Cases Judge William J. Fisher

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MEMORANDUM OF LAW IN SUPPORT OF JOINT MOTION FOR AN ORDER (i) GRANTING EXPEDITED RELIEF, (ii) APPROVING THE SALE AND TRANSFER OF CERTAIN ASSETS AND LIABILITIES FREE AND CLEAR OF ENCUMBRANCES, (iii) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION THEREWITH AND (iv) GRANTING RELATED RELIEF

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Magnetation LLC and each of its subsidiaries that are debtors and debtors in possession in these chapter 11 cases (collectively, the "**Debtors**") submit this memorandum of law in support of the Motion submitted herewith in accordance with Local Rule 9013-2(a).

BACKGROUND

The supporting facts are set forth in the verified Motion, verified by Michael J. Talarico, Chief Restructuring Officer of Magnetation LLC. The Motion is incorporated herein by

reference. All capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Motion.

LEGAL ANALYSIS

I. EXPEDITED RELIEF IS APPROPRIATE

The Debtors request expedited relief on the Motion. Bankruptcy Rule 9006(c) provides that the Court may reduce the notice period for a Motion "for cause shown." Cause exists here to grant the Motion on an expedited basis. As described in the Motion and as further described herein, the Sale will maximize value for the Debtors' estates. ERP has conditioned its obligations under the APA on the entry of the Sale Order by December 16, 2016, and the occurrence of a closing by December 30, 2016, and the Debtors have not received any higher or better offer despite marketing their assets for over eleven months. Moreover, the Debtors continue to incur costs in connection with maintaining the remaining assets. Thus, the sooner the Debtors are able to sell the remaining assets, the more value they can preserve for the estates. Therefore, the Debtors believe it is in the best interests of their estates to seek approval of the Sale as soon as possible.

II. THE SALE IS CONSISTENT WITH THE DEBTORS' BUSINESS JUDGMENT AND SHOULD BE APPROVED

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.*, 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").

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) and *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)).

The Debtors' decision to proceed with the Sale and the transactions contemplated by the APA, including the entry into and assignment of the Restated and Amended Technology License Agreement, is based upon their sound business judgment. As established at the hearing on the Wind-down Motion,[1] the Purchased Assets have been thoroughly market-tested for over eleven months, and the Debtors have not received any other actionable proposal that would provide for the opportunity for the Debtors to restart operations as a going concern or any offer that would provide greater value to the Debtors' estates.[2] Interested parties were afforded sufficient time

[1] Attached to the Motion as Exhibit 3 is a copy of the transcript of the hearing on the Wind-down Motion, which includes sworn testimony from Mark Buschmann, Partner in the Restructuring and Special Situations Group at PJT Partners LP regarding the marketing process, beginning on page 51.

[2] Even if the Sale was considered a private sale despite the nature of the market-tested public sale process that has been undertaken, it would be appropriate under the circumstances. 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 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 Arch Coal, Inc.*, Case No. 16-40120 (Bankr. E.D. Mo. June 17, 2016) [ECF No. 990]; *In re James River Coal Co.*, Case No. 14-31848 (Bankr. E.D. Va. June 5, 2014) [ECF Nos. 351, 352]; *In re Chemtura Corp.*, Case No. 09-11233 (Bankr.

to conduct or complete their diligence, arrange financing and construct and submit informed, competing proposals. Notice of the GSA and the Debtors' interest in a third-party transaction was widely circulated to all interested parties through public court pleadings and PJT's efforts. Ultimately, there was no viable proposal, and the Debtors consummated the GSA.

The Debtors are now focused on selling all of their remaining assets for maximum value. Here, the Initial Buyer represents the party that is otherwise entitled to recover the proceeds of any sale of the Purchased Assets because, once the Prepetition Revolving Agent is paid off in full in cash, the Indenture Trustee and the DIP Agent hold first-priority liens on and security interests in the Purchased Assets. Thus, allowing the Initial Buyer to exchange a portion of their secured claims for the collateral securing such claims will be both efficient and reduce the total amount of claims against the Debtors' estates. The Debtors believe that selling the assets on a piecemeal basis would not garner additional value and could in fact lead to value loss, including as a result of delay and requiring the employment of a third party to sell the assets. Moreover, given that the DIP Agent represents parties holding more than $150 million of secured debt, the Debtors do not believe that there exists any bidder that would outbid the Initial Buyer. Additionally, the parties to the APA are ready and willing to close quickly. The longer the Debtors must maintain the assets in saleable condition, the higher the price to the estates. Finally, ERP has expressed interest in ultimately restarting the Debtors' operations, which could translate to the generation of jobs and a source of business for local vendors.

S.D.N.Y. Jul. 23, 2010) [ECF No. 3366]; *In re Lehman Brothers Holdings, Inc.*, Case No. 08-13555 (Bankr. S.D.N.Y. Sept. 20, 2008) [ECF No. 258]; *In re Loral Space & Commc'ns Ltd.*, Case No. 03-41710 (Bankr. S.D.N.Y. Sep. 30, 2005) [ECF No. 2393]; *In re International Wire Grp., Inc*., Case No. 04-11991 (Bankr. S.D.N.Y. June 10, 2004) [ECF No. 176]; *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).

Accordingly, the Debtors believe that the Sale will result in the maximum benefit to the Debtors' estates and creditors.

III. NOTICE OF THE SALE IS SUFFICIENT

Bankruptcy Rule 2002(c) governs the content of notice of a proposed sale of property of the estate other than in the ordinary course of business. Among other things, Bankruptcy Rule 2002(c) provides that notice shall include the "time and place of any public sale, the terms and conditions of any private sale and the time fixed for filing objections." The notice must furthermore comport with due process, which requires that such notice "be reasonably calculated, under all circumstances, to apprise interested parties" of the sale. *See Baldwin v. Credit Based Asset Servicing and Securitization*, 516 F.3d 734, 737 (8th Cir. 2008) (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)) (internal quotation marks omitted).

For the reasons outlined in the Motion, the Debtors respectfully submit that the service of the Motion on the parties set forth in the Motion complies with Bankruptcy Rule 2002(c) and Local Rule 2002-1, and the Motion includes such information with respect to the Sale as is necessary to inform and enable interested parties to file any objections and participate in the hearing on the Motion.

IV. THE PROPOSED SALE TRANSACTION SATISFIES THE REQUIREMENTS OF BANKRUPTCY CODE SECTION 363(F) FOR A SALE FREE AND CLEAR

The Debtors request that the Court authorize the Sale of the Purchased Assets free and clear of all liens, claims, interests and encumbrances that may be asserted against the Purchased Assets (the "**Encumbrances**"). In the event any Encumbrances are successfully asserted against any of the Purchased Assets, for the reasons set forth in this section, the Debtors assert that the sale of the Purchased Assets may be approved free and clear of any such Encumbrances.

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).

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 Purchased Assets "free and clear" of such Encumbrances. *See, e.g., In re James*, 203 B.R. 449, 450 (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 [debtor in possession] can prove the existence of any one of the five conditions."). Section 363(f) is supplemented by section 105(a) of the Bankruptcy Code, which provides that "[t]he Court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a).

Although section 363(f) of the Bankruptcy Code provides for the sale of assets "free and clear of any interests," the term "any interest" is not defined anywhere in the Bankruptcy Code. Although some courts have "narrowly interpreted that phrase to mean only in rem interests in property," *see, e.g., In re White Motor Credit Corp.*, 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987),

courts have held that the scope of section 363(f) is not limited to in rem interests, and can extend to liabilities that arise under federal statute and for which a succeeding purchaser would otherwise be liable. *In re Leckie Smokeless Coal Co.*, 99 F.3d 573, 581-85 (4th Cir. 1996); *see also Folger Adam Security v. DeMatteis/MacGregor JV*, 209 F.3d 252, 258 (3d Cir. 2000). Accordingly, courts in this district have given "any interest" a broad interpretation. *See In re P.K.R. Convalescent Ctrs., Inc.*, 189 B.R. 90, 94 (Bankr. E.D. Va. 1995) ("[Section] 363 covers more situations than just sales involving liens… [it] addresses sales free and clear of any interest." (emphasis in original)).

There is a trend among courts toward "a more expansive reading of 'interests in property' which 'encompasses other obligations that may flow from ownership of the property.'" *In re Trans World Airlines, Inc.*, 322 F.3d 283, 289 (3d Cir. 2003) (citing 3 COLLIER ON BANKRUPTCY ¶ 363.06[l]); s*ee also MacArthur Co. v. Johns-Manville Corp.* (*In re Johns-Manville Corp.*), 837 F.2d 89, 93-94 (2d Cir. 1988) (channeling of claims to sale proceeds consistent with intent of sale free and clear under section 363(f) of the Bankruptcy Code); *Ninth Avenue Remedial Group v. Allis-Chalmers Corp.*, 195 B.R. 716, 732 (Bankr. N.D. Ind. 1996) (stating that a bankruptcy court has the power to sell assets free and clear of any interest that could be brought against the bankruptcy estate during the bankruptcy); *In re New England Fish Co.*, 19 B.R. 323, 329 (Bankr. W.D. Wash. 1982) (transfer of property in free and clear sale included free and clear of Title VII employment discrimination and civil rights claims of debtors' employees); *Am. Living Sys. v. Bonapfel* (*In re All Am. of Ashburn, Inc.*), 56 B.R. 186, 190 (Bankr. N.D. Ga. 1986) (product liability claims precluded in a sale of assets free and clear); *In re Hoffman*, 53 B.R. 874, 876 (Bankr. D. R.I. 1985) (transfer of liquor license free and clear of any interest permissible even though the estate had unpaid taxes).

The Debtors submit that section 363(f) permits the sale of Purchased Assets free and clear of all Encumbrances, except Encumbrances specifically assumed by the Buyer. Each Encumbrance that is not the result of an assumed liability satisfies at least one of the five conditions of section 363(f), and any such Encumbrance will be adequately protected by attachment to the net proceeds of the sale, subject to any claims and defenses the Debtors may possess with respect thereto.

Accordingly, the Purchased Assets should be transferred to the Buyer free and clear of all Encumbrances, except for any Encumbrances resulting from assumed liabilities.

V. THE BUYER SHOULD BE ENTITLED TO THE PROTECTIONS OF SECTION 363(m) AND 363(N) OF THE BANKRUPTCY CODE

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).

The Bankruptcy Code does not define "good faith." However, courts have stated that "a good faith purchaser is one who buys in good faith and for value. Lack of good faith is shown by misconduct surrounding the sale." *In re Burgess*, 246 B.R. 352, 356 (B.A.P. 8th Cir. 2000). As discussed in the Motion, the Sale is the culmination of an extensive marketing process, in which the Debtors and all parties will have acted in good faith, and the APA has been negotiated in good faith and at arm's length. The Debtors therefore request that the Court make a finding that the Initial Buyer and ERP will have purchased the Purchased Assets in good faith and is entitled to the protections of section 363(m) of the Bankruptcy Code

Moreover, the Purchase Price was not controlled by any agreement among potential bidders at such sale, and no party engaged in collusion or any other conduct that would cause or permit the sale of the Purchased Assets to be avoidable under section 363(n) of the Bankruptcy Code. More specifically, neither the Debtors, nor Initial Buyer, nor ERP Iron Ore engaged in any collusion. In addition, FerroMagnetica, LLC is a third party, owned by EETAC, that may invest in ERP Iron Ore. That investment will only occur post-Closing, if at all, and contemplates a change in control of ERP Iron Ore. The Debtors understand that FerroMagnetica, LLC may provide MagGlobal LLC or its affiliates, including Mag Inc., a minority share of the interests therein, again as part of a separate transaction. Both of those transactions are separate and apart from the APA, and are not a condition to the Closing of the Sale.

The Court's order approving the sale should, therefore, hold that neither the APA nor the transactions contemplated therein may be avoided and no party shall be entitled to damages or other recovery pursuant to section 363(n) of the Bankruptcy Code.

VI. THE ASSUMPTION AND ASSIGNMENT OF THE ASSUMED CONTRACTS AND LEASES SHOULD BE AUTHORIZED

The assumption and assignment of the Assumed Contracts and Assumed Leases are an integral part of the Sale and should be approved by the Court. Section 365(a) of the Bankruptcy Code provides that a debtor may assume or reject an executory contract or unexpired lease, subject to the Court's approval. To assume an executory contract, a debtor in possession must cure any prepetition defaults. 11 U.S.C. § 365(b)(1)(A). If there has been a default, the debtor must also provide adequate assurances of future performance under the contract. 11 U.S.C. § 365(b)(1)(C).

The Eighth Circuit has adopted the business judgment rule for determining whether a debtor is justified in assuming or rejecting an executory contract. *See In re Crystalin,* 293 B.R. at 463. As discussed above, in order to satisfy the business judgment rule in this Circuit, a debtor must carry its burden to show some benefit to the estate, and "this test is not an onerous one." *Id*. at 463-64.

Here, adequate business justification exists to merit judicial approval of the proposed assumption and assignment of the Assumed Contracts and Assumed Leases. If the Debtors are unable to assume and assign the Assumed Contracts and Assumed Leases, it is likely to result in an adjustment to the Purchase Price (as defined in the APA) or may prevent the Sale from closing altogether. In accordance with the terms of the APA, all applicable Cure Amounts, if any, in connection with the Assumed Contracts and Assumed Leases will be paid. To the extent necessary to satisfy the Court, the Debtors believe they can demonstrate at the hearing on the Motion that all requirements for assumption and/or assignment of the Assumed Contracts and Assumed Leases will be satisfied.

Moreover, as set forth in the Motion, each Counterparty will receive notice of the proposed assumption and assignment, the proposed Cure Amount, if any, and the deadline to object to any of the foregoing, which will (a) enable the Debtors, the Buyer and the applicable Counterparty to reconcile Cure Amounts, if any, in accordance with section 365 of the Bankruptcy Code, and (b) enable the applicable Counterparty to object to the assumption and assignment of the Assumed Contract or Assumed Lease on any basis, including the Cure Amount or the adequacy of the Buyer's assurance of future performance. The Debtors believe that such notice is fair and reasonable and provides sufficient notice and certainty to all Counterparties regarding the obligations and rights in respect thereof.

VII. BULK SALES AND TAXES

The Debtors assert that any laws regarding bulk sales, or similar laws, are not applicable to the sale of Purchased Assets. In addition, the Debtors assert that because the assignment, transfer and/or sale of the Purchased Assets: (i) is in exchange for the Purchase Price, no withholding of U.S. federal income tax pursuant to sections 1441 or 1442 of the Internal Revenue Code is required, and (ii) constitutes an occasional sale, it is exempt from Minnesota and Indiana sales and use tax pursuant to Minnesota Statutes, section 297A.67, subdivision 23, and 45 IAC 2.2-1-1(d).

VIII. BANKRUPTCY RULES 6004(h) AND 6006(d) SHOULD BE WAIVED

The Debtors request that, upon entry of an order approving the Sale, the Court waive the 14-day stay requirements of Bankruptcy Rules 6004(h) and 6006(d). This will allow the Sale to close as soon as possible, which is required by the APA, and prevent further delay in the administration of these cases. In addition, because many of the Purchased Assets impose holding costs on the Debtors during their period of ownership and control, any delay in closing may diminish the Debtors' estates to the detriment of creditors. Thus, the Debtors respectfully submit that a waiver of the 14-day stay requirements contained in Bankruptcy Rules 6004(h) and 6006(d) is appropriate under the circumstances.

Dated: December 6, 2016

DAVIS POLK & WARDWELL LLP

/s/ Michelle M. McGreal

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EXHIBIT 1

UNITED STATES BANKRUPTCY COURT

DISTRICT OF MINNESOTA

****

In re:

MAGNETATION LLC, et al,

Debtors.

(includes:

Mag Lands, LLC
Mag Finance Corp.
Mag Mining, LLC
Mag Pellet LLC)

Jointly Administered under Case No. 15-50307

Court File No. 15-50307 (WJF)

Court File Nos.:

15-50308 (WJF)
15-50309 (WJF)
15-50310 (WJF)
15-50311 (WJF)

Chapter 11 Cases
Judge William J. Fisher

****

ORDER GRANTING JOINT MOTION FOR AN ORDER (I) APPROVING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' REMAINING ASSETS, (II) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (III) GRANTING RELATED RELIEF

****

Upon the motion (Docket No. [ ], the "Motion")[1] of Magnetation LLC ("Mag LLC") and

[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Asset Purchase Agreement.

its subsidiaries that are debtors and debtors in possession (collectively, the "Debtors") for an order approving the sale of substantially all of the Debtors' remaining assets, authorizing the assumption and assignment of certain executory contracts and unexpired leases, and granting related relief; and the Court having reviewed the Motion; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:

A. **Jurisdiction, Core Proceeding, Statutory Predicates, and Venue.** This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The predicates for the relief granted herein are Bankruptcy Code sections 105, 363, and 365, Bankruptcy Rules 2002, 6004, 6006 and 9019, and Local Rules 2002-1 and 6004-1(e). Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

B. **Just Cause.** The legal and factual bases set forth in the Motion establish just cause for the relief granted herein. Entry of this Order is in the best interests of the Debtors and their respective estates, creditors, and all other parties-in-interest.

C. **Notice.** The notice of the Motion, the relief requested therein and herein, the hearing to approve the Motion (the "Sale Hearing"), the assumption and assignment of the Assigned Contracts (as defined below) and Cure Costs related thereto, if any, and the proposed entry of this Order was adequate and sufficient under the circumstances of these chapter 11 cases, and such notice complied with all applicable requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules. A reasonable opportunity to object or be heard

regarding the relief granted by this Order has been afforded to all parties in interest entitled to notice pursuant to the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules. Accordingly, no further notice of the Motion, the Sale Hearing, or this Order is necessary or required.

D. Actual written notice of the Motion, the Sale Hearing, the assumption and/or assignment of Assumed Contracts and Assumed Leases, the proposed Cure Costs, the sale of the Purchased Assets (which term includes, for all purposes in this Order, the White County TIF Bonds) free and clear of any and all Encumbrances other than Permitted Encumbrances and Assumed Liabilities pursuant to the Asset Purchase Agreement (the "Sale") and all transactions contemplated therein or in connection therewith, and all deadlines related thereto has been given to all interested persons and entities, including, without limitation: (i) all entities that assert any Encumbrance in the Purchased Assets; (ii) all parties to the Contracts and Leases to be assumed and/or assigned pursuant to this Order or the Asset Purchase Agreement; (iii) all governmental taxing authorities that have or as a result of the Sale of the Purchased Assets may have claims, contingent or otherwise, against the Debtors; (iv) all federal, state, and local taxing authorities having jurisdiction over any of the Purchased Assets, including the Internal Revenue Service; (v) all federal, state, and local governmental agencies and environmental agencies in any jurisdiction where the Debtors own or have owned or used real property; (vi) the Environmental Protection Agency; (vii) all parties that filed requests for notices under Bankruptcy Rule 9010(b) or were entitled to notice under Bankruptcy Rule 2002; (viii) all known creditors (whether liquidated, contingent or unmatured) of the Debtors, or other Persons named in the Debtors' schedules filed with the Court; (ix) all interested governmental, pension, environmental, and other regulatory entities; (x) the Office of the Attorney General of Minnesota; (xi) the Office of the Attorney

General of Indiana; (xii) any other applicable state attorneys general; (xiii) the Office of the United States Trustee for the District of Minnesota; and (xiv) the United States Department of Justice. The foregoing constitutes proper, timely, adequate, and sufficient notice under the particular circumstances of these cases, and no further notice need be provided.

E. **Extensive Efforts by Debtors.** Since before the entry of the order approving the Settlement Agreement, the Debtors worked with their counsel and financial advisors to implement a viable transaction that would allow them to maximize the value of the Purchased Assets. The transaction that is the subject of this Order is the result of the Debtors' extensive efforts seeking to maximize recoveries to the Debtors' estates for the benefit of the Debtors' stakeholders.

F. **Business Justification.** The Debtors have demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the Court to grant the relief requested in the Motion, including, without limitation, to: (i) authorize the Sale of the Purchased Assets free and clear of Encumbrances other than Permitted Encumbrances and Assumed Liabilities; (ii) authorize the assumption and assignment of certain executory contracts and unexpired leases; and (iii) grant related relief as set forth herein. Such compelling and sound business purpose and justification was set forth in the Motion and on the record at the Sale Hearing, are incorporated herein by reference and, among other things, form the basis for the findings of fact and conclusions of law set forth herein.

G. **Objections are Overruled.** All objections, responses, or reservations of rights to the relief requested in the Motion that have not been withdrawn, waived, or settled as expressly set forth in this Order or by stipulation filed with the Court are overruled on the merits with prejudice.

H. **Asset Purchase Agreement.** In an exercise of their business judgment, the Debtors, in consultation with their management, board of directors, advisors and the other parties in interest, decided to enter into and consummate the asset purchase agreement attached hereto as Exhibit A (such asset purchase agreement, including all exhibits, schedules and ancillary agreements related thereto, as may be amended from time to time, the "Asset Purchase Agreement") with MG Initial Purchaser, LLC ("Bidco") as assignee of the right to credit bid from Wilmington Trust, National Association (the "DIP Agent") as agent to the lenders (the "DIP Lenders") under Mag LLC's Debtor-In-Possession Credit Agreement dated as of May 7, 2015 (the DIP Lenders, Bidco, and the DIP Agent, collectively the "Credit Bidding Parties"), which Asset Purchase Agreement will be assigned and novated to ERP Iron Ore, LLC (the "Buyer"). The consummation of the transactions contemplated by the Asset Purchase Agreement, the Motion, and this Order is legal, valid, and properly authorized under all applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, and all of the applicable requirements of such sections and rules have been complied with in respect of such transactions. As part of the transactions contemplated by the Asset Purchase Agreement, the Debtors have executed the Restated and Amended Technology License Agreement, which they seek the Court's approval of in the Motion and this Order. The Mag Entities also executed the Mag Entities Support Agreement supporting the transactions contemplated by the Asset Purchase Agreement, which Mag Entities Support Agreement does not require Court approval as no Debtor is party thereto.

I. **Sale Hearing.** The Sale Hearing occurred on [_____, 2016].

J. **Adequate Marketing; Highest or Otherwise Best Offer.** As demonstrated by (i) the contents of the Sale Motion, which are verified by Michael J. Talarico, and the contents

any documents referenced therein, (ii) the testimony and other evidence proffered or adduced at the Sale Hearing, and (iii) the representations of counsel made on the record at the Sale Hearing, (a) the Debtors have adequately marketed the Purchased Assets and conducted a fair and equitable sale process; (b) a reasonable and fair opportunity has been given to any interested party to make the highest or otherwise best offer for the Purchased Assets; (c) the consideration provided in the Asset Purchase Agreement constitutes the highest or otherwise best offer for the Purchased Assets; (d) the consideration in the Asset Purchase Agreement provides fair and reasonable consideration for the Purchased Assets and constitutes reasonably equivalent value under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia; (e) taking into consideration all relevant factors and circumstances, no other entity has offered to purchase the Purchased Assets for greater economic value to the Debtors or their estates; and (f) the Debtors' determination that the Asset Purchase Agreement constitutes the highest or otherwise best offer for the Purchased Assets constitutes a valid and sound exercise of the Debtors' business judgment.

K. **No Successor Liability.** Neither the Credit Bidding Parties nor the Buyer is an "insider" or "affiliate" of the Debtors, as those terms are defined in the Bankruptcy Code, and no common identity of incorporators, directors or stockholders existed or exists between the Buyer, the Credit Bidding Parties, and the Debtors. The transfer of the Purchased Assets to and the assumption of the Assumed Liabilities (including any individual elements of the transactions contemplated by the Asset Purchase Agreement or related thereto) by the Buyer does not, and will not, subject the Buyer or the Credit Bidding Parties to any liability whatsoever, with respect to the operation of the Debtors' businesses prior to the Closing of the Sale or by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the

District of Columbia, based, in whole or in part, directly or indirectly, in any theory of law or equity including, without limitation, any laws affecting antitrust, successor, transferee or vicarious liability. Pursuant to the Asset Purchase Agreement, the Buyer is not purchasing all of the Debtors' assets in that the Buyer is not purchasing any of the Excluded Assets or assuming the Excluded Liabilities, and the Buyer is not holding itself out to the public as a continuation of the Debtors. The transactions contemplated by the Asset Purchase Agreement or related thereto do not amount to a consolidation, merger or *de facto* merger of the Credit Bidding Parties or Buyer with the Debtors and/or the Debtors' estates. There is no substantial continuity between either the Credit Bidding Parties or Buyer and the Debtors, and there is no continuity of enterprise between the Debtors and the Buyer or the Credit Bidding Parties. The Buyer is not a mere continuation of the Debtors or the Debtors' estates, and the Buyer does not constitute a successor to the Debtors or the Debtors' estates. None of the transactions contemplated by the Asset Purchase Agreement or related thereto, including, without limitation, the Sale or the assumption and/or assignment of the Assumed Contracts (the Assumed Contracts shall include the Restated and Amended Technology License Agreement for all purposes of this Order) and Assumed Leases, is being undertaken for the purpose of escaping liability for any of the Debtors' debts or hindering, delaying, or defrauding creditors under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

L. **Property of the Estate.** The Purchased Assets are property of the Debtors' estates and title thereto is vested in the Debtors' estates. The Debtors are the sole and lawful owners of the Purchased Assets.

M. **Sale in Best Interests.** The actions taken or to be taken by the Debtors, the Buyer, and the Credit Bidding Parties are appropriate under the circumstances of these chapter

11 cases and are in the best interests of the Debtors, their estates and creditors, and other parties in interest. Approval of the Asset Purchase Agreement, the Sale, the Restated and Amended Technology License Agreement, and all related transactions at this time is in the best interests of the Debtors, their creditors, their estates, and all other parties in interest.

N. **No *Sub Rosa* Plan.** The consummation of the Sale outside of a plan of reorganization pursuant to the Asset Purchase Agreement neither impermissibly restructures the rights of the Debtors' creditors nor impermissibly dictates the terms of a plan of reorganization or liquidation for the Debtors. The Asset Purchase Agreement, the Sale, and the transactions contemplated therein and associated therewith do not constitute a *sub rosa* plan.

O. **No Fraudulent Transfer.** The Sale is not for the purpose of hindering, delaying or defrauding creditors under the Bankruptcy Code and under the laws of the United States, any state, territory, possession or the District of Columbia. The Debtors, the Buyer, and the Credit Bidding Parties are not and will not be entering into the Asset Purchase Agreement or the transactions contemplated thereby fraudulently.

P. **Arm's-Length Sale.** The Asset Purchase Agreement, the Sale, and the transactions contemplated therein and associated therewith were negotiated, proposed, and entered into by the Debtors, the Credit Bidding Parties, and the Buyer (and the holders of interests in the Buyer) without collusion, in good faith, and from arm's-length bargaining positions. None of the Debtors, the Credit Bidding Parties, the Buyer, FerroMagnetica LLC, Magnetation, Inc., MagGlobal LLC, or their respective investors, insiders or affiliated entities has engaged in any conduct that would cause or permit the Asset Purchase Agreement, the Sale, or any part of the transactions thereunder or in connection therewith to be avoided under Bankruptcy Code section 363(n).

Q. **Good Faith Purchaser.** The Buyer and the Credit Bidding Parties are good faith purchasers under Bankruptcy Code section 363(m) and, as such, are entitled to all of the protections afforded thereby. Specifically: (i) the Buyer and the Credit Bidding Parties recognized that the Debtors were free to deal with any other party interested in purchasing the Purchased Assets; (ii) all payments to be made by the Buyer or claim reduction to be made by the Credit Bidding Parties in connection with the Sale have been disclosed; (iii) no common identity of directors, officers or controlling stockholders exists among the Buyer or the Credit Bidding Parties and the Debtors; (iv) the negotiation and execution of the Asset Purchase Agreement was at arm's-length and in good faith, and at all times each of the parties was represented by competent counsel of their choosing; (v) neither the Buyer nor the Credit Bidding Parties in any way induced or caused the chapter 11 filing of the Debtors; and (vi) the Buyer (and FerroMagnetica LLC and the holders of interests in the Buyer or FerroMagnetica LLC) and the Credit Bidding Parties have not acted in a collusive manner with any Person. The Buyer and the Credit Bidding parties will be acting in good faith within the meaning of Bankruptcy Code section 363(m) in closing the transactions contemplated by the Asset Purchase Agreement (including the assumption and novation of the Asset Purchase Agreement from Bidco to ERP Iron Ore).

R. **Corporate Authority.** Each Debtor (i) has full corporate power and authority to execute the Asset Purchase Agreement and all other documents contemplated thereby, and the Sale of the Purchased Assets has been duly and validly authorized by all necessary corporate action of each of the Debtors, (ii) has all of the corporate power and authority necessary to consummate the transactions contemplated by the Asset Purchase Agreement, (iii) has taken all corporate action necessary to authorize and approve the Asset Purchase Agreement and the

consummation by the Debtors of the transactions contemplated thereby, and (iv) needs no further consents or approvals, other than those expressly provided for in the Asset Purchase Agreement, which may be waived in accordance with the terms therewith.

S. **Free and Clear Findings Required by the Buyer.** The Buyer and Bidco would not have entered into the Asset Purchase Agreement and the Buyer would not consummate the Sale if the sale of the Purchased Assets to the Buyer were not, pursuant to Bankruptcy Code section 363(f), free and clear, except for Permitted Encumbrances and Assumed Liabilities, of (i) all liens (statutory or otherwise), mortgages, deeds of trust, pledges, charges, security interests, rights of first refusal, hypothecations, encumbrances, royalties, easements, servitudes, leases or subleases, rights-of-way, encroachments, restrictive covenants, restrictions on transferability or other similar restrictions, rights of offset or recoupment, right of use or possession, conditional sale arrangements, (ii) all claims, including all rights or causes of action (whether in law or in equity), proceedings, warranties, guarantees, indemnities, rights of recovery, setoff, recoupment, indemnity or contribution, obligations, demands, restrictions, indemnification claims, or liabilities relating to any act or omission of the Debtors or any other person prior to the Closing, consent rights, options, contract rights, covenants, and interests of any kind or nature whatsoever (known or unknown, matured or unmatured, accrued, or contingent and regardless of whether currently exercisable), whether arising prior to or subsequent to the commencement of the above-captioned cases, and whether imposed by agreement, understanding, law, equity, or otherwise, and (iii) all debts, liabilities, obligations, contractual rights and claims and labor, employment and pension claims, in each case, whether known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent

or non-contingent, liquidated or unliquidated, matured or un-matured, material or non-material, disputed or undisputed, whether arising prior to or subsequent to the commencement of these chapter 11 cases, and whether imposed by agreement, understanding, law, equity or otherwise ((i), (ii), and (iii) collectively are included in the term "Encumbrances" for any and all purposes in this Order). Except for Permitted Encumbrances and Assumed Liabilities, the Sale shall be free and clear of, and neither the Buyer nor the Credit Bidding Parties shall be responsible for, any Encumbrances of any kind or nature whatsoever, including, without limitation, in respect of the following: (i) any rights or Encumbrances based on any successor or transferee liability, (ii) any Encumbrances that purport to give any party a right or option to effect any forfeiture, modification, right of first offer or first refusal, or termination of the Debtors' or the Buyer's interest in the Purchased Assets, or any similar rights; (iii) any labor or employment agreements; (iv) mortgages, deeds of trust, and security interests; (v) intercompany loans and receivables between the Debtors and any non-Debtor subsidiary; (vi) any pension, multiemployer plan (as such term is defined in Section 3(37) or Section 4001(a)(3) of ERISA), health or welfare, compensation or other employee benefit plans, agreements, practices, and programs, including, without limitation, any pension plans of the Debtors or any multiemployer plan to which the Debtors have at any time contributed to or had any liability or potential liability, including, but not limited to, any and all COBRA Liabilities, Withdrawal Liabilities, or Liabilities relating to a collective bargaining agreement or Benefit Plan; (vii) any other employee, worker's compensation, occupational disease, or unemployment or temporary disability related claim, including, without limitation, claims that might otherwise arise under or pursuant to (a) the Employee Retirement Income Security Act of 1974, as amended, (b) the Fair Labor Standards Act, (c) Title VII of the Civil Rights Act of 1964, (d) the Federal Rehabilitation Act of 1973, (e)

the National Labor Relations Act, (f) the Age Discrimination and Employment Act of 1967 and Age Discrimination in Employment Act, as amended, (g) the Americans with Disabilities Act of 1990, (h) the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, including, without limitation, the requirements of Part 6 of Subtitle B of Title I of ERISA and Section 4980B of the Code and of any similar state law (collectively, "COBRA"), (i) state discrimination laws, (j) state unemployment compensation laws or any other similar state laws, (k) any other state or federal benefits or claims relating to any employment with the Debtors or any of their predecessors, or (l) the WARN Act (29 U.S.C. §§2101 *et seq.*); (viii) any bulk sales or similar law; (ix) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended, and any taxes arising under or out of, in connection with, or in any way relating to the operation of the Purchased Assets prior to the Closing, including, without limitation, any *ad valorem* taxes assessed by any applicable taxing authority; (x) any unexpired and executory contract or unexpired lease to which a Debtor is a party that is not an Assigned Contract that will be assumed and assigned pursuant to this Order and the Asset Purchase Agreement; or (xi) any other Excluded Liabilities as provided in the Asset Purchase Agreement. A sale of the Purchased Assets other than one free and clear of all Encumbrances would yield substantially less value for the Debtors' estates, with less certainty, than the Sale as contemplated. Therefore, the Sale contemplated by the Asset Purchase Agreement and approved herein free and clear of all Encumbrances, except for Permitted Encumbrances and Assumed Liabilities, is in the best interests of the Debtors, their estates and creditors, and all other parties in interest.

T. **Binding and Valid Transfer.** The transfer of the Purchased Assets to the Buyer will be a legal, valid, and effective transfer of the Purchased Assets and, except for the Permitted

Encumbrances and Assumed Liabilities, will vest the Buyer with all right, title, and interest of the Debtors to the Purchased Assets free and clear of all Encumbrances and any liabilities of the Debtors.

U. **Satisfaction of Section 363(f) Standards.** The Debtors may sell the Purchased Assets free and clear of all Encumbrances of any kind or nature whatsoever, because, in each case, one or more of the standards set forth in Bankruptcy Code section 363(f)(1)-(5) has been satisfied. Those holders of Encumbrances, and non-debtor parties to the Assigned Contracts who did not object, or who withdrew their objections, to the Motion are deemed to have consented pursuant to Bankruptcy Code section 363(f)(2). In all cases, each such person with Encumbrances in the Purchased Assets is enjoined from taking any action against the Purchased Assets or the Buyer, the Credit Bidding Parties, their respective affiliates, or any agent of the foregoing with respect to any such Encumbrance.

V. **Necessity of Order.** The Buyer and the Credit Bidding Parties would not have entered into the Asset Purchase Agreement and would not consummate the transactions without all of the relief provided for in this Order (including, but not limited to, that the transfer of the Purchased Assets to the Buyer be free and clear of all Encumbrances and an injunction against creditors and other third parties pursuing Encumbrances). The consummation of the transactions pursuant to this Order and the Asset Purchase Agreement is necessary for the Debtors to maximize the value of their estates for the benefit of all creditors and other parties in interest.

W. **Time of the Essence.** The Sale of the Purchased Assets must be approved and consummated promptly in order to preserve the value of the Purchased Assets. Therefore, time is of the essence in consummating the Sale, and the Debtors and the Buyer intend to close the Sale as soon as reasonably practicable.

X. **Assigned Contracts.** The Debtors have demonstrated that it is an exercise of their sound business judgment to sell, assume, and assign the unexpired leases and executory contracts designated as Assumed Contracts and Assumed Leases on Exhibit B (collectively, the "Assigned Contracts" and, individually, an "Assigned Contract") to the Buyer in connection with the consummation of the Sale, and the assumption and assignment of the Assigned Contracts is in the best interests of the Debtors, their estates and creditors, and other parties in interest. The Assigned Contracts being assigned to the Buyer are an integral part of the Purchased Assets being purchased by the Buyer, and, accordingly, such assumption and assignment of the Assigned Contracts and the liabilities associated therewith are reasonable and enhance the value of the Debtors' bankruptcy estates.

Y. **Cure and Adequate Assurance.** The Debtors have cured or the Debtors and the Buyer have demonstrated their ability to cure any default with respect to any act or omission that occurred prior to the Closing under any of the Assigned Contracts, within the meaning of Bankruptcy Code section 365(b)(1)(A). The proposed cure costs listed next to each Assigned Contract on Exhibit B, if any, (the "Cure Costs") are the only amounts necessary to "cure" all "defaults," each within the meaning of Bankruptcy Code section 365(b), under such Assigned Contracts. Each non-debtor counterparty to an Assigned Contract shall be prohibited from challenging, objecting to or denying the Cure Cost payable. The Buyer's promise to perform the obligations under the Assigned Contracts arising after the Closing shall constitute adequate assurance of its future performance of and under the Assigned Contracts, within the meaning of Bankruptcy Code sections 365(b)(1) and 365(f)(2). All counterparties to the Assigned Contracts who did not file an objection to the Cure Costs or an objection to the assumption and assignment of the Assigned Contracts prior to the Sale Hearing, are deemed to consent to the assumption by

the Debtors of their respective Assigned Contract and the assignment thereof to the Buyer upon payment of the associated Cure Cost. The filed objections of all counterparties to the Assigned Contracts that were heard at the Sale Hearing (to the extent not withdrawn or adjourned), were considered by the Court, and are overruled on the merits with prejudice. The Court finds that, with respect to all such Assigned Contracts, the payment of the Cure Costs in accordance with the terms of the Asset Purchase Agreement is appropriate and is deemed to fully satisfy the obligations under Bankruptcy Code section 365(b). Accordingly, all of the requirements of Bankruptcy Code section 365(b) have been satisfied for the assumption and the assignment by the Debtors to the Buyer of each of the Assigned Contracts. To the extent any Assigned Contract that is applicable to a Purchased Asset is not an executory contract or unexpired lease within the meaning of Bankruptcy Code section 365 and is not an Excluded Asset, it shall be transferred to the Buyer in accordance with the terms of this Order.

Z. **Unenforceability of Anti-Assignment Provisions.** Anti-assignment provisions in any Assigned Contract shall not restrict, limit, or prohibit the assumption, assignment, and sale of the Assigned Contracts and are deemed and found to be unenforceable anti-assignment provisions within the meaning of Bankruptcy Code section 365(f), and the Assigned Contracts shall have been effectively assigned to Buyer at Closing.

AA. **Other Contracts and Leases.** The hearing on assumption and assignment and any related Cure Costs, or rejection, for other Contracts or Leases designated for potential assumption and assignment to Buyer in the Motion, but which do not constitute Assigned Contracts, shall be adjourned to **[ ], 2016 at [ ].m. CT** and noticed by the Debtors to the applicable non-Debtor counterparties.

BB. **Credit Bid.** Pursuant to the Final Order (I) Granting an Expedited Hearing;

(II) Authorizing the Debtors (A) to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(C)(1), 364(C)(2), 364(C)(3), 364(D)(1), 364(E) and 507 and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363 and (III) Granting Adequate Protection to Prepetition Secured Creditors Pursuant to 11 U.S.C. §§ 361, 362, 363, 364 and 507 [Docket No. 169] (the "Final DIP Order"), the DIP Lenders have an allowed superpriority claim of approximately $159,705,883, which is secured by valid binding and perfected liens on all of the Purchased Assets. Pursuant to a certain Assignment Agreement, the DIP Agent has transferred the right to credit bid on account of the DIP Obligations to Bidco, and Bidco is therefore entitled to credit bid on behalf of the DIP Lenders. Further, to the extent any of the Purchased Assets constitute Remaining Asset Proceeds (as such term is used in the Order approving the Settlement Agreement [Docket # 1004]), the right to receive the first $6,000,000 of such Remaining Asset Proceeds plus, upon payment in cash in full of the Deferred Payment Amount (as defined in the Settlement Agreement), an amount of such Remaining Asset Proceeds equal to the Deferred Payment Amount (which was $6,914,872.22 as of November 30, 2016), shall be transferred to Buyer at Closing by force of this Order and without need for any further agreement.

CC. As such, upon payment in cash in full of the Deferred Payment Amount, the Credit Bidding Parties have the right to credit bid for the Purchased Assets and the Buyer (through the novation of the Asset Purchase Agreement to it) has right to consummate the Sale reflecting the credit bid.

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

EE. **Best Interest.** Entry of this Order is in the best interests of the Debtors, the Debtors' estates, their creditors, and other parties in interest.

FF. **Findings and Conclusions.** The findings of fact and conclusions of law herein constitute the Court's findings of fact and conclusions of law for the purposes of Bankruptcy Rule 7052, made applicable pursuant to Bankruptcy Rule 9014. To the extent any findings of facts are conclusions of law, they are adopted as such. To the extent any conclusions of law are findings of fact, they are adopted as such.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

General Provisions

1. The Motion is granted and the relief requested therein is granted and approved in its entirety, as set forth herein.

2. Any objections, responses, or reservations of rights to the entry of this Order or to the relief granted herein or the relief requested in the Motion, including any objections to the proposed Cure Costs or the assumption and assignment of any Assigned Contracts, that have not been adjourned, withdrawn, waived, or settled, or not otherwise addressed or resolved pursuant to the express terms of this Order or a stipulation filed with the Court, if any, hereby are denied and overruled on the merits with prejudice.

Approval of the Sale of the Purchased Assets

3. The Asset Purchase Agreement, the Restated and Amended Technology License Agreement, and all the terms and conditions thereof, are approved.

4. Pursuant to Bankruptcy Code section 363(b), the Sale of the Purchased Assets to the Buyer free and clear of all obligations and Encumbrances (except Permitted Encumbrances and the Assumed Liabilities), and the transactions contemplated thereby is approved in all

respects.

Sale and Transfer of the Purchased Assets

5. Pursuant to Bankruptcy Code sections 105, 363, and 365, and notwithstanding any provision of the Operating Agreement (as defined in the Settlement Agreement), the Debtors are authorized to perform their obligations under, and comply with the terms of, the Asset Purchase Agreement and consummate the Sale and the related transactions pursuant to, and in accordance with, the terms and conditions of the Asset Purchase Agreement and this Order. The Debtors are authorized to execute and deliver, and empowered to perform under, consummate, and implement, the Asset Purchase Agreement, together with all additional instruments and documents that the Debtors or the Buyer deem necessary or appropriate to implement the Asset Purchase Agreement and effectuate the transactions contemplated therein, and to take all further actions as may reasonably be required by the Buyer for the purpose of assigning, transferring, granting, conveying, and conferring to the Buyer or reducing to Buyer's possession the Purchased Assets or as may be necessary or appropriate to the performance of the obligations as contemplated by the Asset Purchase Agreement, in each case, without any further corporate action or orders of the Court. All of the Debtors' right, title and interest in the Intercompany Note will be sold and assigned to Buyer at Closing, and, effective as of the Closing, the Debtors disclaim any right, title, or interest in the Intercompany Note. Also, for the avoidance of doubt, Bidco (or Initial Buyer in the Asset Purchase Agreement) has no right, title, or interest in the Intercompany Note, and, in the event any such right, title, or interest may exist, it is disclaimed by Bidco.

6. Following the Closing, the Debtors or the Buyer are authorized file a certified copy of this Order, which, once filed, registered or otherwise recorded, shall constitute

conclusive evidence of the release of all obligations, liabilities, and Encumbrances in the Purchased Assets of any kind or nature whatsoever. Upon the Closing, this Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance, and transfer of the Debtors' interests in the Purchased Assets and a bill of sale transferring good and marketable title in the Purchased Assets to the Buyer free and clear of all Encumbrances, except for the Permitted Encumbrances and Assumed Liabilities

7. Except for the Permitted Encumbrances and Assumed Liabilities, pursuant to Bankruptcy Code sections 105(a) and 363(f), the Purchased Assets shall be transferred to the Buyer as required under the Asset Purchase Agreement, and such transfer shall be free and clear of all Encumbrances of any Person, including, without limitation, all such Encumbrances specifically enumerated in this Order, whether arising by agreement, by statute, or otherwise and whether occurring or arising before, on, or after the Petition Date, whether known or unknown, occurring, or arising prior to such transfer. For the avoidance of doubt, the Sale of the Purchased Assets to Buyer shall be free and clear of all Statutory Liens or other security interests listed on the attached Exhibit C.

8. Effective as of Closing, (a) the transfer and assignment of the Purchased Assets and the Assigned Contracts to the Buyer pursuant to the Asset Purchase Agreement constitutes a legal, valid, and effective transfer of the Purchased Assets and the Assigned Contracts notwithstanding any requirement for approval or consent by any person, and shall vest the Buyer with all right, title, and interest of the Debtors in and to the Purchased Assets free and clear of all Encumbrances of any kind or nature whatsoever, except for the Permitted Encumbrances and Assumed Liabilities, and (b) the assumption of the Assigned Contracts and any Assumed Liabilities by Buyer constitutes a legal, valid, and effective delegation of any and all obligations,

liabilities, and claims in respect thereof that first arise or accrue after the Closing to Buyer, and, other than to the extent expressly provided in this Order and/or the Asset Purchase Agreement, divests the Debtors and their officers, directors, employees, counsel, accountants, advisors, agents, consultants, stockholders, partners, members, controlling persons and other representatives of such Person of all liability with respect to the Assigned Contracts and such Assumed Liabilities.

9. All Persons and entities are prohibited and enjoined from taking any action to adversely affect or interfere with the ability of the Debtors to transfer the Purchased Assets to the Buyer in accordance with the Asset Purchase Agreement and this Order; *provided* 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, or from enforcing its rights under this Order or relieving the Buyer of any Assumed Liability.

10. Except as expressly permitted by the Asset Purchase Agreement or this Order, all Persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, trade creditors, dealers, employees, litigation claimants, contract counterparties and other creditors, holding Liens, claims Encumbrances, and other interests of any kind or nature whatsoever, including, without limitation, rights or claims based on any Taxes or successor or transferee liability, against or in a Debtor or the Purchased Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to, the Debtors, the Purchased Assets or the operation of the Purchased Assets before the Closing, or the transactions contemplated by the Asset Purchase Agreement, including, without limitation, the Sale and the assumption and assignment of the

Assigned Contracts, are forever barred, estopped, and permanently enjoined from asserting, prosecuting, commencing, continuing, or otherwise pursuing in any manner any action, claim or other proceeding of any kind, directly or indirectly, against the Buyer, its respective successors and assigns, its respective property and the Purchased Assets, such Persons' or entities' Liens, claims, or Encumbrances, including, without limitation, rights or claims based on any Taxes or successor or transferee liability. Actions that are barred hereby include, without limitation: (i) the commencement or continuation of any action or other proceeding, (ii) the enforcement, attachment, collection, or recovery of any judgment, award, decree or order, (iii) the creation, perfection, or enforcement of any Encumbrance, (iv) the assertion of any right of setoff, subrogation or recoupment of any kind, (v) the commencement or continuation of any action that does not comply with, or is inconsistent with, the provisions of this Order, any actions contemplated or taken in respect hereof, or the Asset Purchase Agreement, and (vi) the revocation, termination or failure or refusal to renew any license, permit, registration, or governmental authorization or approval to operate any of the Purchased Assets or conduct the businesses associated with such Purchased Assets. Following the Closing, no holder of an Encumbrance on, in or against the Purchased Assets shall interfere with Buyer's title to or use and enjoyment of the Purchased Assets based on or related to such Encumbrance, or any actions that the Debtors may take in the Debtors' cases. For the avoidance of doubt, nothing herein shall impair or otherwise affect any right under this Order or relieve the Buyer of any Assumed Liability.

11. Upon the Closing, the Debtors or the Buyer are authorized and directed to execute and file, register, or otherwise record a certified copy of this Order, which, once filed, shall constitute conclusive evidence of the release of all Encumbrances of any kind or nature

whatsoever in the Debtors or the Purchased Assets. Each of the Debtors' creditors and any other holder of an Encumbrance is authorized and directed (save that Buyer will file the releases of Encumbrances on behalf of the DIP Agent), without cost to the Debtors or the Buyer, to execute such documents and take all other actions as may be necessary to release its Encumbrance in the Purchased Assets, if any, as such Encumbrances may have been recorded or may otherwise exist. If any Person or entity that has filed financing statements, mortgages, mechanic's liens, *lis pendens*, or other documents or agreements evidencing an Encumbrance in the Debtors or the Purchased Assets shall not have delivered to the Debtors prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all Encumbrances, which the person or entity has with respect to the Debtors or the Purchased Assets or otherwise, then the Debtors or the Buyer are authorized to execute and file such statements, instruments, releases, and other documents on behalf of the person or entity with respect to the Debtors or the Purchased Assets. Each and every federal, state, and local governmental agency or department is hereby authorized to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Asset Purchase Agreement, including, without limitation, recordation of this Order and any documents to release any Encumbrances by the Debtors or the Buyer. This Order shall be binding upon and shall govern the acts of all Persons including without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other Persons who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of

such assets or other property interests.

12. All entities that are currently, or on the Closing may be, in possession of some or all of the Purchased Assets are hereby directed to surrender possession of the Purchased Assets to the Buyer on the Closing or subsequently if directed by Buyer, unless the Buyer otherwise agrees in writing.

13. The Order is self-executing, and neither the Debtors nor the Buyer shall be required to execute or file releases, termination statements, assignments, consents, or other instruments to effectuate, consummate, and implement the provisions of this Order.

14. To the extent provided by Bankruptcy Code section 525, no Governmental Authority may deny, revoke, suspend, or refuse to renew any Permit, License, Mineral Tenure, or similar grant relating to the Purchased Assets sold, transferred, or conveyed to the Buyer on account of the filing or pendency of these chapter 11 cases or the transactions contemplated by the Asset Purchase Agreement and this Order.

15. The Debtors, the Buyer, and the Credit Bidding Parties shall have no obligation to proceed with the Closing until all conditions precedent to their obligations to proceed have been met, satisfied, or waived in accordance with the terms of the Asset Purchase Agreement.

No Successor Liability

16. Except to the extent the Buyer assumes the Assumed Liabilities, or takes the Purchased Assets subject to the Permitted Encumbrances, Buyer's purchase of the Purchased Assets shall be free and clear of, and neither the Buyer nor the Credit Bidding Parties shall have any successor, transferee, derivative, or vicarious liabilities of any kind or character for, any Encumbrances, including under any theory of successor or transferee liability, *de facto* merger or continuity, whether known or unknown as of the Closing, now existing or hereafter arising,

whether fixed or contingent, asserted or unasserted, liquidated or unliquidated, including without limitation, with respect to any of the following: (i) any foreign, federal, state, or local revenue, pension, ERISA, Tax, labor, employment, the WARN Act, antitrust, environmental, or other law, rule, or regulation (including, without limitation, filing requirements under any such laws, rules or regulations); (ii) under any products liability law, rule, regulation, or doctrine with respect to the Debtors' liability under such law, rule, regulation, or doctrine, or under any product warranty liability law or doctrine; (iii) any employment or labor agreements, consulting agreements, severance arrangements, change-in-control agreements, or other similar agreement to which the Debtors are a party; (iv) any welfare, compensation, or other employee benefit plans, agreements, practices, and programs, including, without limitation, any pension plan of the Debtors; (v) the cessation of the Debtors' operations, dismissal of employees, or termination of employment or labor agreements or pension, welfare, compensation, or other employee benefit plans, agreements, practices and programs, obligations that might otherwise arise from or pursuant to the (a) Employee Retirement Income Security Act of 1974, as amended, (b) the Fair Labor Standards Act, (c) Title VII of the Civil Rights Act of 1964, (d) the Federal Rehabilitation Act of 1973, (e) the National Labor Relations Act, (f) the Age Discrimination and Employment Act of 1967, (g) the Americans with Disabilities Act of 1990, or (h) COBRA, including, but not limited to, any and all COBRA Liabilities, Withdrawal Liabilities, or Liabilities relating to a collective bargaining agreement or Benefit Plan; (vi) environmental liabilities, debts, claims, or obligations arising from conditions first existing on or prior to the Closing (including, without limitation, the presence of hazardous, toxic, polluting, or contamination substances or wastes), which may be asserted on any basis, including, without limitation, under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq.; (vii) any

liabilities, debts, or obligations of or required to be paid by the Debtors for any Taxes of any kind for any period; (viii) any liabilities, debts, commitments, or obligations for any Taxes relating to the operation of the Purchased Assets prior to the Closing; (ix) any bulk sale law; and (x) any litigation. The Buyer shall have no liability or obligation under the WARN Act by virtue of its purchase of assets from the Debtors.

17. The Buyer and the Credit Bidding Parties have given substantial consideration under the Asset Purchase Agreement, which consideration shall constitute valid and valuable consideration for the releases of any potential claims of successor liability of the Buyer (or the Credit Bidding Parties) and which shall be deemed to have been given in favor of the Buyer and the Credit Bidding Parties by all holders of Encumbrances and Liabilities (except for Permitted Encumbrances and the Assumed Liabilities) in or against the Debtors, or the Purchased Assets. Without limiting the Buyer's obligation to pay and satisfy the Assumed Liabilities, upon consummation of the Sale, neither the Buyer nor the Credit Bidding Parties shall be deemed to (a) be the successor to the Debtors or their estates, (b) have, *de facto* or otherwise, merged with or into the Debtors, or (c) be a mere continuation, alter ego or substantial continuation of the Debtors or the enterprise of the Debtors, in each case, under any theory of law or equity as a result of any action taken in connection with the Asset Purchase Agreement or any of the transactions or documents ancillary thereto or contemplated thereby or in connection with the acquisition of the Purchased Assets.

Good Faith

18. The transactions contemplated by the Asset Purchase Agreement are undertaken by the Buyer and the Credit Bidding Parties without collusion and in good faith, as that term is used in Bankruptcy Code section 363(m), and, accordingly, the reversal or modification on

appeal of the authorization provided in this Order to consummate the transactions shall not affect the validity or enforceability of the transactions (including the assumption and assignment of any of the Assigned Contracts) approved or obligations or rights granted pursuant to the terms of this Order. The Buyer and the Credit Bidding Parties are purchasers in good faith of the Purchased Assets and are entitled to all the protections afforded by Bankruptcy Code section 363(m).

19. Neither Bidco (or the Credit Bidding Parties) nor the Buyer (or FerroMagnetica LLC, Magnetation, Inc., MagGlobal LLC, their respective insiders or affiliated entities, or the holders of interests in any of the foregoing or the Buyer) has colluded with or entered into an agreement with any other potential bidders or any other parties interested in the Purchased Assets (except as disclosed to the Court), and, therefore, neither the Debtors nor any successor in interest to the Debtors' estates shall be entitled to bring an action against any such Persons, and the Sale may not be avoided pursuant to Bankruptcy Code section 363(n) or any other section of the Bankruptcy Code.

20. The consideration provided by the Buyer and the Credit Bidding Parties for the Purchased Assets under the Asset Purchase Agreement constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia. The Sale may not be avoided under Bankruptcy Code section 363(n). The Asset Purchase Agreement was not entered into, and the Sale is not being consummated, for the purpose of hindering, delaying, or defrauding creditors of the Debtors under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof, or the District of Columbia, or any other applicable law. None of the Debtors, the Buyer, or the Credit Bidding Parties has entered into the Asset Purchase Agreement or any agreement contemplated thereby or is consummating the Sale with any

fraudulent or otherwise improper purpose, including, without limitation, to evade any pension liabilities. No other person or entity or group of persons or entities has offered to purchase the Purchased Assets for an amount that would provide greater value to the Debtors and their estates than the value provided by the Buyer. The Court's approval of the Motion and the Asset Purchase Agreement are in the best interests of the Debtors, the bankruptcy estates of the Debtors, their creditors, and all other parties in interest.

Bar Order

21. Any entity or Person shall be forever barred from commencing any cause of action or asserting any claim, whether in law or in equity, direct or indirect, or individually or as a class, of whatever kind or nature, whether known or unknown (except for claims or causes of action to enforce this Order, the Asset Purchase Agreement, or any documents ancillary thereto or entered into as part of Buyer's acquisition of the Purchased Assets) against the Debtors or the Credit Bidding Parties, or any of their respective Affiliates, employees (and members, directors, officers, agents and representatives as to the Credit Bidding Parties), attorneys and advisors, and their successors or assignees, based upon or arising out of the Debtors' or Credit Bidding Parties' actions or omissions in connection with or in any way relating to the Asset Purchase Agreement or this Order, including the negotiation and execution thereof and the consummation of the transactions contemplated thereby; provided, however, that the foregoing shall not apply to the enforcement of this Order, the Asset Purchase Agreement, or any documents ancillary thereto or entered into as part of Buyer's acquisition of the Purchased Assets, by the parties thereto.

Assumption and Assignment of Assigned Contracts

22. Pursuant to Bankruptcy Code sections 105(a), 363, and 365 and subject to and conditioned upon the Closing of the Sale, the Debtors' sale, assumption and assignment to the

Buyer of the Assigned Contracts is approved, and the requirements of Bankruptcy Code section 365(b)(1) with respect thereto are satisfied.

23. The Debtors are authorized and directed in accordance with Bankruptcy Code sections 105(a) and 365 to (i) assume and assign to the Buyer, effective as of the Closing, as provided by, and in accordance with, the Asset Purchase Agreement, the Assigned Contracts free and clear of all Encumbrances of any kind or nature whatsoever, other than the Permitted Encumbrances and Assumed Liabilities, and (ii) execute and deliver to the Buyer such documents or other instruments as the Buyer reasonably deems necessary to assign and transfer the Assigned Contracts to the Buyer.

24. At Closing, the Assigned Contracts shall be transferred and assigned to, pursuant to the Asset Purchase Agreement, and thereafter remain in full force and effect for the benefit of, the Buyer, notwithstanding any provision in any such Assigned Contract (including, but not limited to, those of the type described in Bankruptcy Code sections 365(b)(2), (e)(1), and (f)) that prohibits, restricts, or conditions such assignment or transfer. The Debtors shall be relieved from any further liability with respect to the Assigned Contracts after such assumption and assignment to the Buyer. The Debtors may assign each Assigned Contract in accordance with Bankruptcy Code sections 363 and 365, and no sections or provisions of the Assigned Contracts that purport to (a) prohibit, restrict, or condition the Debtors' assignment of the Assigned Contracts, including, but not limited to, the conditioning of such assignment on the consent of the non-Debtor counterparty to such Assigned Contract; (b) authorize the termination, cancellation, or modification of the Assigned Contract based on the filing of a bankruptcy case, the financial condition of the Debtors or similar circumstances; (c) declare a breach or default as a result of a change in control in respect of the Debtors; or (d) provide for additional payments, penalties,

conditions, renewals, extensions, charges, other financial accommodations (for the avoidance of doubt, the Mag Entities Support Agreement does not constitute an Assigned Contract, and this provision shall not alter Buyer's obligation to cancel the Intercompany Note in accordance with the terms of the Mag Entities Support Agreement) in favor of the non-Debtor party to the Assigned Contract, or modification of any term or condition upon the assignment of an Assigned Contract or the occurrence of the conditions set forth in subsection (b) above, shall have any force and effect, and such provisions constitute unenforceable anti-assignment provisions under Bankruptcy Code § 365(f) and/or are otherwise unenforceable under Bankruptcy Code § 365(e).

25. The entry of this Order constitutes the consent of the non-Debtor parties to the Assigned Contracts to the assumption and assignment of such agreements without the necessity of obtaining such party's consent, written or otherwise, to such assumption or assignment. All Assigned Contracts shall remain in full force and effect, without existing default(s), nor shall there exist any event or condition which, with the passage of time or giving of notice, or both, would constitute such a default, subject only to payment of the applicable Cure Cost, if any, in accordance with the Asset Purchase Agreement.

26. There shall be no rent accelerations, assignment fees, increases or any other fees charged to Buyer, their successors or assigns, or the Debtors as a result of the assumption and assignment of the Assigned Contracts.

27. The failure of the Debtors or the Buyer to enforce at any time one or more terms or conditions of any Assigned Contract shall not be a waiver of such terms or conditions, or of the Debtors' and the Buyer's rights to enforce every term and condition of the Assigned Contracts.

28. Buyer has provided adequate assurance of its future performance under the

relevant Assigned Contracts within the meaning of sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code (including section 365(b)(3) to the extent applicable), and all other requirements and conditions under Bankruptcy Code sections 363 and 365 for the assumption by the Debtors and assignment to the Buyer of each Assigned Contract have been satisfied.

29. All defaults and all other obligations or liabilities under any Assigned Contract occurring, arising, or accruing prior to the date of the assignment or transfer to the Buyer shall be deemed cured or satisfied upon payment by the Buyer of the Cure Cost on Exhibit B, or any other Cure Cost reached by written agreement with the Buyer, and, without limiting the foregoing, no effect shall be given to any default of the type set forth in Bankruptcy Code section 365(b)(2), or the type of default concerning an unexpired lease of real property described in Bankruptcy Code section 365(b)(1) whether or not such Assigned Contract is an executory contract or unexpired lease within the meaning of Bankruptcy Code section 365. The Cure Costs listed on Exhibit B, or any other Cure Cost reached by written agreement with the Buyer, reflect the sole amounts necessary under Bankruptcy Code section 365(b) to cure all monetary defaults under the Assigned Contracts, and no other amounts are or shall be due to the non-Debtor parties in connection with the assumption by the Debtors and assignment to the Buyer of the Assigned Contracts.

30. Except as provided in the Asset Purchase Agreement or this Order, after the Closing, the Debtors and their estates shall have no further liabilities or obligations with respect to any Assigned Contract, and all holders of such claims first arising from and after Closing under any Assigned Contract are forever barred, estopped and permanently enjoined from raising or asserting against the Debtors, or the Buyer or the property of any of such parties, any assignment fee, default, breach, claim, pecuniary loss, liability, or obligation (whether legal or

equitable, secured or unsecured, matured or unmatured, contingent or noncontingent, known or unknown, liquidated or unliquidated senior or subordinate) arising by reason of the assumption, assignment and/or Closing. Notwithstanding the foregoing, pursuant to the terms of the Asset Purchase Agreement, Buyer shall be liable for all obligations and liabilities first arising and accruing after the Closing under the Assigned Contracts (and Cure Costs), all of which shall constitute Assumed Liabilities, and the Debtors shall not be liable for any such obligations or liabilities.

31. Nothing in this Order, the Motion, or any notice or any other document is or shall be deemed an admission by the Debtors that any contract or lease is an executory contract or unexpired lease.

32. Except for the Assumed Liabilities and Cure Costs that will be paid as provided in the Asset Purchase Agreement, neither the Buyer, nor any of its successors or assigns, or any of their respective affiliates shall have any liability for any Encumbrance that arose or occurred prior to the Closing, or otherwise is assertable against the Debtors or is related to the Purchased Assets prior to the Closing. The Buyer is not and shall not be deemed a "successor" to the Debtors or their estates, have, *de facto* or otherwise, merged with or into the Debtors, or be a mere continuation or substantial continuation of the Debtors or the enterprise of the Debtors under any theory of law or equity as a result of any action taken in connection with the Asset Purchase Agreement or any of the transactions or documents ancillary thereto or contemplated thereby or in connection with the acquisition of the Purchased Assets.

Additional Provisions

33. This Order and the Asset Purchase Agreement shall be binding in all respects on all Persons and entities, including, but not limited to, the Debtors and their affiliates, the Buyer,

the Credit Bidding Parties, AK Steel Corporation, JPMorgan Chase Bank, N.A. (in its capacity as Prepetition Revolving Agent, or otherwise), holders of Statutory Liens, the State of Minnesota, Itasca County, MagGlobal LLC, Magnetation, Inc. and their affiliates, and the respective successors and assigns of the foregoing, and all known and unknown creditors of and all holders of equity security interests in any Debtor, including any holders of Encumbrances, all counterparties to the Assigned Contracts, all counterparties to contracts that are not assumed or assigned, and any trustees appointed in the Debtors' chapter 11 cases or upon a conversion to cases under chapter 7 of the Bankruptcy Code, and this Order shall not be subject to amendment or modification and the Asset Purchase Agreement shall not be subject to rejection. Nothing contained in any chapter 11 plan confirmed in any Debtor's bankruptcy case, any order confirming any such chapter 11 plan, or any other order in these chapter 11 cases shall alter, conflict with, or derogate from, the provisions of the Asset Purchase Agreement or this Order. The Buyer shall be authorized, as of the Closing, to operate under any Transferred Permits/Licenses and, to the greatest extent available under applicable law and to the extent provided for under the Asset Purchase Agreement, all such Transferred Permits/Licenses are deemed to and shall have been transferred to the Buyer as of the Closing free and clear of any and all Encumbrances except Assumed Liabilities and Permitted Encumbrances. All Transferred Permits/Licenses shall remain in place for the Buyer's benefit until such Transferred Permits/Licenses are recorded in the name of the Buyer. This Order shall inure to the benefit of the Debtors, their estates, Buyer, the Credit Bidding Parties, and the respective permitted successors and assigns of the foregoing.

34. To the extent applicable, the automatic stay pursuant to Bankruptcy Code section 362 is hereby lifted with respect to the Debtors to the extent necessary, without further order of

the Court (a) to allow Bidco or the Buyer to give the Debtors any notice provided for in the Asset Purchase Agreement, and (b) to allow Bidco or the Buyer to take any and all actions permitted by the Asset Purchase Agreement.

35. No bulk sales law or similar law shall apply in any way to the transactions contemplated by the Sale, the Asset Purchase Agreement, the Motion, or this Order. The assignment, transfer and/or sale of the Purchased Assets: (i) is in exchange for the Purchase Price and the assumption of Assumed Liabilities, and so no withholding of U.S. federal income Tax pursuant to Sections 1441 or 1442 of the Internal Revenue Code is required, and (ii) constitutes a casual sale or occasional sale, and is exempt from state sales and use Tax or similar Taxes.

36. This Court retains jurisdiction, pursuant to its statutory powers under 28 U.S.C. § 157(b)(2), to, among other things, (i) compel delivery of the Purchased Assets to the Buyer, (ii) interpret, implement, and enforce the provisions of this Order and the Asset Purchase Agreement and all amendments hereto, and any waivers and consents thereunder, (iii) protect the Buyer, the Credit Bidding Parties, their respective affiliates, or any agent of the foregoing, against any Encumbrances against the Debtors or the Purchased Assets of any kind or nature whatsoever, except for the Permitted Encumbrances and Assumed Liabilities, (iv) decide any disputes concerning this Order and the Asset Purchase Agreement or the rights and duties of the parties hereunder or thereunder or any issues relating to the Asset Purchase Agreement, including, but not limited to, the status, nature, and extent of the Purchased Assets and any Assigned Contracts and all issues and disputes arising in connection with the relief authorized herein, inclusive of those concerning the transfer of the assets free and clear of all Encumbrances and (v) enforce the injunctions set forth herein.

37. No brokers were involved in consummation of the Sale, and no brokers'

commissions are due to any person in connection with the Sale; *provided, however*, that this provision does not impact any transaction or other fees due to investment bankers or financial advisors employed by the Debtors or certain of their creditors for which the Debtors may be obligated to pay in accordance with an engagement letter with such professional(s).

38. To the extent there is any inconsistency between the terms of this Order and the terms of the Asset Purchase Agreement or any other document contemplated by the Asset Purchase Agreement, the terms of this Order shall govern.

39. The failure to specifically include any particular provision of the Asset Purchase Agreement or the Restated and Amended Technology License Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that all the terms and conditions of the Asset Purchase Agreement and the Restated and Amended Technology License Agreement be authorized and approved in their entirety.

40. The Asset Purchase Agreement and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto and in accordance with the terms thereof, without further notice or order of the Court.

41. Notwithstanding the provisions of Bankruptcy Rules 6004(h) and 6006(d), this Order shall not be stayed for fourteen (14) days after its entry and shall be effective immediately upon entry, and the Debtors and the Buyer are authorized to close the transactions contemplated by the Asset Purchase Agreement immediately upon entry of this Order. Time is of the essence in closing the transactions referenced herein, and the Debtors, Bidco, and the Buyer intend to close the transactions as soon as practicable. This Order is a final, appealable order and the period in which an appeal must be filed shall commence upon the entry of this Order. Any party objecting to this Order must exercise due diligence in filing an appeal and pursuing a stay, or risk

its appeal being foreclosed as moot. Notwithstanding anything contained in this Order, the Buyer shall not be required to consummate any of the transactions contemplated by the Asset Purchase Agreement or the Mag Entities Support Agreement in the event this Order or this Court's authorization to consummate any of those transactions pursuant to the terms of this Order shall have been (i) reversed, (ii) stayed, or (iii) modified in any material respect prior to the Closing (other than with the prior written consent of Buyer).

42. The provisions of the Asset Purchase Agreement and this Order may be specifically enforced in accordance with the Asset Purchase Agreement notwithstanding the appointment of any chapter 7 or chapter 11 trustee after the Closing.

43. Headings utilized in this Order are for convenience of reference only, and do not constitute a part of this Order for any other purpose.

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

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

Dated: __, 2016 _____

EXHIBIT A

Asset Purchase Agreement

Execution Version

ASSET PURCHASE AGREEMENT

dated as of

December 6, 2016

among

MG INITIAL PURCHASER, LLC,

ERP IRON ORE, LLC,

MAGNETATION LLC

and

THE SUBSIDIARIES OF MAGNETATION LLC LISTED ON SCHEDULE A HERETO

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EXHIBITS

SCHEDULES

ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT (this "**Agreement**"), dated as of December 6, 2016 (the "**Effective Date**"), by and among MG Initial Purchaser, LLC, a Delaware limited liability company ("**Initial Buyer**"), ERP Iron Ore, LLC, a Virginia limited liability company ("**ERP Iron Ore**"), Magnetation LLC, a Delaware limited liability company (the "**Company**"), and the Subsidiaries (as hereinafter defined) of the Company set forth on Schedule A (collectively, the "**Company Subsidiaries**," and together with the Company, the "**Sellers**"). The Buyer, Sellers and ERP Iron Ore are referred to herein individually as a "**Party**" and collectively as the "**Parties**".

W I T N E S S E T H :

WHEREAS, On May 5, 2015, the Sellers commenced bankruptcy proceedings under chapter 11 of the Bankruptcy Code (as hereinafter defined) (the "**Bankruptcy Cases**") in the Bankruptcy Court for the District of Minnesota (the "**Bankruptcy Court**"). The Bankruptcy Cases are jointly administered under the caption *In re Magnetation LLC, et al*., 15-50307 (WJF) (Bankr. D. Minn.);

WHEREAS, the Sellers desire to sell certain assets and transfer certain liabilities of the Sellers, upon the terms and subject to the conditions hereinafter set forth;

WHEREAS, Initial Buyer desires to enter into this Agreement to purchase certain assets and assume certain liabilities of the Sellers, upon the terms and subject to the conditions hereinafter set forth;

WHEREAS, ERP Iron Ore is prepared to assume all of Initial Buyer's rights and obligations hereunder, upon the terms and subject to the conditions hereinafter set forth;

WHEREAS, upon the terms and conditions set forth herein, the Parties intend to effectuate the transactions contemplated by this Agreement pursuant to sections 105, 363 and 365 of the Bankruptcy Code;

WHEREAS, the execution and delivery of this Agreement and the Sellers' ability to consummate the transactions set forth in this Agreement are subject, among other things, to the entry of the Sale Order (as hereinafter defined);

WHEREAS, simultaneously herewith, the Company and Magnetation, Inc. have entered into the Restated and Amended Technology License Agreement, pursuant to which, among other things, Magnetation, Inc., to the extent it holds interests in the Licensed Technology, has granted the Company a non-exclusive, non-sublicensable, perpetual, royalty-free license for all of the Licensed Technology (the "**Restated and Amended Technology License Agreement**"), attached hereto as Exhibit A; and

WHEREAS, simultaneously herewith, Magnetation, Inc. and Mag Global, LLC (collectively, "**Mag Entities**" and each a "**Mag Entity**"), ERP Iron Ore and Initial Buyer have entered into a support agreement, pursuant to which certain transactions contemplated by the

Settlement Agreement (to the extent not otherwise contemplated hereby) shall be effected, substantially in the form attached hereto as Exhibit B (the "**Mag Entities Support Agreement**").

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1
DEFINITIONS

Section 1.01. Definitions. As used herein, the following terms have the following meanings:

"**Action**" means any claim, action, cause of action, demand, lawsuit, arbitration, formal inquiry, notice of violation, proceeding or litigation, whether civil, criminal, administrative, regulatory, at law, in equity or otherwise.

"**Affiliate**" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with such other Person; *provided* that, with respect to any Seller, such Seller's Affiliates shall include only the Debtors and Persons directly or indirectly controlled by a Debtor. For purposes of this definition, "control" when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlling" and "controlled" have correlative meanings.

"**Alternative Transaction**" means (i) the filing of a plan of reorganization or liquidation contemplating the sale or retention of all or any portion of the Purchased Assets that is inconsistent with the terms of this Agreement or (ii) a sale, lease or other disposition, directly or indirectly, by merger, consolidation, tender offer, share exchange or otherwise to one or more third parties of all or any portion of the Purchased Assets.

"**Applicable Law**" means, with respect to any Person, any transnational, domestic or foreign federal, state or local law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, order, injunction, judgment, decree, ruling, reporting or licensing requirement or other similar requirement enacted, adopted, promulgated or applied by a Governmental Authority that is binding upon or applicable to such Person or its assets, Liabilities or business, as amended unless expressly specified otherwise.

"**Auditor**" means a recognizable, reputable and impartial certified public accounting firm that is mutually acceptable to Buyer and Sellers.

"**Avoidance Action**" means any avoidance, preference or recovery, claim, action or proceeding arising under chapter 5 of the Bankruptcy Code or under any similar state or federal law.

"**Bankruptcy Code**" means title 11 of the United States Code, sections 101 *et. seq.*

"**Benefit Plans**" means all employment, consulting, retention, severance, change-in-control and retirement agreements, plans, programs and policies, and any other bonus, stock option, stock purchase, restricted stock, other compensatory equity or equity-based, incentive, fringe benefit, profit-sharing, pension or retirement, deferred compensation, medical, life insurance, disability, accident, cafeteria, salary continuation, severance, accrued leave, vacation, sick pay, sick leave, supplemental retirement, unemployment and other compensation or employee benefit plans, programs, policies, agreements and arrangements (whether or not insured), in each case, maintained or contributed to or required to be contributed to by a Seller for the benefit of current or former employees of a Seller or their dependents or beneficiaries

"**Business Day**" means a day, other than Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by Applicable Law to close.

"**Buyer**" means (a) prior to the ERP Assumption, the Initial Buyer, and (b) after the ERP Assumption, ERP Iron Ore.

"**claim**" means: (i) a "claim" as defined in Section 101(5) of the Bankruptcy Code, or (ii) any "adverse claims" as defined in Section 8-102 of the Uniform Commercial Code, offset rights, setoff rights, recoupment rights, causes of action, defenses or demands.

"**Closing Date**" means the date of the Closing.

"**COBRA**" means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

"**COBRA Liability**" means all Liabilities arising on or prior to the Closing Date under Section 4980B of the Code or Section 601 et seq. of ERISA with respect to any current or former employees of any Seller and/or any beneficiaries or dependents thereof.

"**Code**" means the Internal Revenue Code of 1986, as amended.

"**Company 401(k) Plans**" mean the Mag Hourly Plan, the Magnetation LLC Retirement Trust, the Mag Mining, LLC Retirement Trust, and the Mag Pellet LLC Retirement Trust.

"**Contract**" means any note, bond, mortgage, indenture, agreement, lease, license, sublicense, contract, trust, instrument, arrangement, guarantee, purchase order or other commitment, obligation or understanding, whether oral or written, that is legally binding.

"**Contracts Assignment and Assumption Agreements**" means the Assignment and Assumption Agreements for the Assumed Contracts, substantially in the form attached hereto as Exhibit C.

"**Cure Notice**" means the notice sent to counterparties in connection with Assumed Contracts and Assumed Leases proposed to be assumed or assumed and assigned pursuant to section 365 of the Bankruptcy Code and the Sale Order, the form and substance of which notice shall include (a) procedures for objecting to proposed assumptions or assumptions and assignments of Assumed Contracts and Assumed Leases, (b) the proposed amount to be paid on

account of Cure Costs, and (c) procedures for resolution by the Bankruptcy Court of any related disputes.

"**Debtors**" mean the Company and the Subsidiaries of the Company set forth on Schedule A.

"**Disclosure Schedule**" means the confidential disclosure schedule, dated the date hereof, regarding this Agreement that has been provided by the Parties on the date hereof.

"**DIP Agent**" means Wilmington Trust, National Association, or such other administrative agent under the DIP Credit Agreement, as amended, modified and supplemented from time to time.

"**DIP Credit Agreement**" means that certain Debtor-in-Possession Credit Agreement, dated as of May 7, 2015, by and among the Company, the lenders party thereto and Wilmington Trust, National Association, as administrative agent, as amended, modified and supplemented from time to time.

"**Encumbrance**" means, with respect to any property or asset, any title defect, mortgage, Indebtedness, Lien, Liabilities, pledge, charge, security interest or any other interest, bailment (in the nature of a pledge or for purposes of security), deed of trust, grant of a power to confess judgment, conditional sales and title retention agreement (including any lease or license in the nature thereof), claim, easement, encroachment, right of way, charge, condition, equitable interest, restriction or encumbrance of any kind.

"**Environmental Law**" means any Applicable Law relating to: (i) the pollution, protection or reclamation of the environment or (ii) any spill, emission, release or disposal into the environment of, or human exposure to, any pollutant, contaminant or chemical or any toxic, radioactive, ignitable, corrosive, reactive or otherwise hazardous substance, waste or material.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended.

"**ERISA Affiliate**" of any entity means any other entity which, together with such entity, would be treated as a single employer under Section 414 of the Code.

"**Excluded Pre-Closing Fines**" means any monetary fines and penalties to the extent that such monetary fines and penalties arise from or relate to acts or omissions of a Seller or a Seller's business occurring on or before the Closing Date, including any monetary fines and penalties for which Seller or any of its Affiliates have received a written notice of violation or notice of claim (or other notice of similar legal intent or meaning) from any Government Authority relating to a violation on or prior to the Closing Date.

"**Fundamental Representations**" means the representations and warranties set forth in Section 3.01, Section 3.03, Section 3.04, Section 3.09, Section 3.10, Section 3.17, Section 3.18, Section 4.01, Section 4.02, Section 4.03 and Section 4.08.

"**GAAP**" means generally accepted accounting principles in the United States, consistently applied.

"**General Assignments and Bills of Sales**" means the General Assignments and Bills of Sales for the Purchased Assets, substantially in the form attached hereto as Exhibit D.

"**Governmental Authority**" means any transnational, domestic or foreign federal, state, local, provincial, municipal, special purpose, or other governmental or quasi-governmental authority or regulatory body, court, tribunal, arbitrating body, governmental department, commission, board, officer, self-regulating authority, taxing authority, bureau or agency, as well as any other instrumentality or entity designated to act for or on behalf of any of the foregoing.

"**Hazardous Material**" means any pollutant, contaminant or any toxic, radioactive, ignitable, corrosive, reactive or otherwise hazardous substance, waste or material that in each case is regulated under any Environmental Law.

"**Indebtedness**" means, with respect to any Person, (i) all indebtedness for borrowed money, (ii) all indebtedness evidenced by notes, bonds, mortgage loans, term loans, debentures or other similar instruments, (iii) all obligations for the deferred purchase price of property or services (including any obligations relating to any earn-out or bonus payments), (iv) all obligations under capitalized leases, (v) all guarantees (other than those made in the ordinary course of business) or other commitments by which such Person assures a creditor against loss (including contingent reimbursement obligations regarding letters of credit), (vi) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to acquired property, (vii) all obligations under commodity swap agreements, commodity cap agreements, interest rate cap agreements, interest rate swap agreements, foreign currency exchange agreements and other similar agreements, (viii) any Liability arising from deferred rent or deferred compensation, (ix) any Liability for the employer's share of any payroll Taxes due in connection with any payments made pursuant to the Transactions, (x) any Liability under any Benefit Plan, (xi) all guaranties of any of the foregoing and (xii) all outstanding prepayment premiums, if any, and any Liability for interest and any fees, penalties, costs or other charges associated with the foregoing.

"**Intellectual Property Right**" means any trademark, service mark, trade name, corporate name, domain name or universal resource locator (URL), Internet address, mask work, topography right, invention, patent application, patent, utility model, industrial design, right in a design, trade secret, know-how (whether or not memorialized), legally protectable technical information, engineering drawings, specifications, confidential information, copyright, or copyrightable work, including any right to apply for registration or registration, application for registration, registration, or grant of any of the foregoing or any other intellectual property right of any nature anywhere in the world.

"**Intercompany Note**" means that certain promissory note dated October 4, 2011 made by Magnetation, Inc. in favor of the Company, as amended on March 6, 2013 and as amended, supplemented or otherwise modified from time to time in accordance with the terms thereof, the principal balance of which as of the date of this Agreement is in excess of $17 million.

"**Knowledge**" means (i) with respect to any Seller, to the knowledge of the officers of the Company listed on Schedule 1.01(a)(ii), after reasonable inquiry, and (ii) with respect to ERP Iron Ore, to the Knowledge of Thomas M. Clarke, after reasonable inquiry.

"**Lease Assignment and Assumption Agreements**" means the Lease Assignment and Assumption Agreements for the Assumed Leases owned by the Sellers or any of their Subsidiaries, substantially in the form attached hereto as Exhibit E.

"**Leased Real Property**" means all real property and other rights leased or subleased by any Seller pursuant to the Leases.

"**Leases**" means the real property leases and subleases to which any Seller is a party.

"**Liabilities**" means all existing or future liabilities, debts, obligations, assessments, duties, or adverse claims of any Seller of every type and trade, whether matured or unmatured, fixed or contingent, absolute or contingent, known or unknown, accrued or unaccrued, liquidated or unliquidated, direct or indirect, or otherwise.

"**Licensed Technology**" means the Licensed Technology as defined in the Restated and Amended Technology License Agreement.

"**Liens**" means any mortgage, hypothecation, deed of trust, pledge, lien, security interest, conditional or installment sale agreement or other title retention agreement, exaction, imposition, levy, or charge, whether imposed by Law, Contract or otherwise, including, but not limited to, the Statutory Liens.

"**Loss(es)**" means all losses, Liabilities, obligations, damages, deficiencies, expenses, Actions, suits, proceedings, demands, assessments, interest, awards, penalties, fines, Taxes, costs and expenses of whatever kind (including reasonable attorneys' fees, court costs, expert witness fees, transcript costs and other expenses of litigation and the cost of pursuing any insurance providers) and judgments (at law or in equity) of any nature.

"**Management Services Agreement**" means the Management Services Agreement by and between Magnetation, Inc. and the Company, dated October 4, 2011.

"**Material Adverse Effect**" means any change, development, occurrence, circumstance or effect that, individually or in the aggregate, has had or would reasonably be expected to have, individually or in the aggregate with all other changes, developments, occurrences, circumstances or effects, a material adverse effect on the condition (financial or otherwise), assets, liabilities, business or results of operations of the business of the Sellers, taken as a whole, excluding any change, development, occurrence, circumstance or effect resulting from (A) changes in GAAP or changes in the regulatory accounting requirements applicable to any industry in which the Sellers operate, (B) changes in financial or securities markets or general economic or political conditions in the United States or any other country or region, (C) changes (including changes of Applicable Law) in general conditions in the industry in which the Sellers operate, (D) acts of war, sabotage or terrorism or natural disasters, (E) any action taken (or omitted to be taken) at the request of Buyer or its Affiliates, (F) any failure by the Sellers or the business of the Sellers to meet any projections or forecasts for any period occurring on or after the date hereof (provided that this clause (F) shall not prevent a determination that any event, circumstance, effect or change underlying such failure to meet projections or forecasts has resulted in a Material Adverse Effect), (G) the filing of the Bankruptcy Case and operations of the business of the Sellers in bankruptcy, (H) the Settlement Agreement and the wind-down

contemplated thereby, or (I) any action taken by the Sellers that is expressly required pursuant to this Agreement, in each case of clauses (A), (B), (C) and (D), to the extent the Sellers, taken as a whole, are not materially disproportionately affected thereby as compared with other participants in the industry in which the Sellers operate.

"**Mineral Tenures**" means the mineral claims, mining leases, mining licenses, coal licenses, coal leases, recorded claims, leased claims, leases of recorded claims, locations, quartz claims, placer claims, placer leases, undersurface rights and other mining rights, tenures and concessions of which the Seller is the recorded holder related to the Purchased Assets.

"**Multiemployer Plan**" means each Benefit Plan that is a "multiemployer plan" as defined in Section 4001(a)(3) of ERISA.

"**Owned Real Property**" means that real property which is owned by a Seller, together with all of such Seller's right, title and interest in and to the following: (i) all buildings, structures and improvements located on such real property, (ii) all improvements, fixtures, machinery, apparatus or equipment affixed to such real property, (iii) all rights of way, easements, if any, in or upon such real property and all right-of-way and other rights and appurtenances belonging or in any way pertaining to such real property and (iv) any Leases affecting such real property. For purposes of Article 2 of this Agreement, section (iv) of the Owned Real Property definition shall include only Assumed Leases.

"**Permitted Encumbrance**" means (i) Encumbrances that constitute Assumed Liabilities, (ii) Apportioned Obligations in favor of a Governmental Authority attributable to the Post-Closing Tax Period that constitute Assumed Liabilities and are not yet due and payable, (iii) landlords', carriers', warehousemen's, mechanic's, suppliers', materialmen's, or repairmen's statutory liens or other similar Encumbrances imposed by Applicable Law, that, in each case, (A) arise in the ordinary course of business and (B) are released prior to the Closing (for the avoidance of doubt, any Permitted Encumbrance in this Subsection (iii) shall be released at or prior to Closing, and so shall not constitute a Permitted Encumbrance post-Closing), (iv) easements, covenants that run with the land, and restrictions on use of Purchased Real Property imposed by Applicable Law in favor of a Governmental Authority in the ordinary course of the Sellers' business (which shall not include default or breach of a Contract or Lease) or (v) compliance obligations (excluding any Liability) created by local, county, state and federal laws, ordinances or governmental regulations including Environmental Laws and regulations, local building and fire codes, and zoning, conservation, or other land use regulations now or hereafter in effect relating to any Purchased Real Property which, in the case of clauses (ii) through (iv), do not, individually or in the aggregate, materially detract from the value of any Purchased Assets and do not materially interfere with the present or intended use of any Purchased Assets.

"**Person**" means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization, including a Governmental Authority.

"**Pre-Closing Tax Period**" means (i) any Tax period ending on or before the Closing Date and (ii) with respect to a Tax period that commences before but ends after the Closing Date, the portion of such period up to and including the Closing Date.

"**Representatives**" means, with respect to any Person, its officers, directors, employees, counsel, accountants, advisors, agents, consultants, stockholders, partners, members, controlling persons and other representatives of such Person; *provided*, that neither AK Steel Corporation, Magnetation, Inc. nor any of their respective Affiliates shall be Representatives of any Seller.

"**Sale Order**" means an order of the Bankruptcy Court in the form of Exhibit F, with such non-material changes as are in form and substance reasonably satisfactory to Initial Buyer, ERP Iron Ore and the Sellers, pursuant to, *inter alia*, sections 105, 363 and 365 of the Bankruptcy Code (i) authorizing and approving, *inter alia*, the sale of the Purchased Assets to Initial Buyer and ERP Iron Ore as Initial Buyer's nominee and the assumption of the Assumed Liabilities on the terms and conditions set forth herein, (ii) containing certain findings of facts and law, including all findings requested in the Sale Motion and a finding that Initial Buyer and ERP Iron Ore are good faith purchasers pursuant to section 363(m) of the Bankruptcy Code, and (iii) authorizing and approving the assignments of the rights to receive distributions under the Settlement Agreement to ERP Iron Ore at Closing as contemplated by paragraph BB of the form of order attached as Exhibit F.

"**Sale Motion**" means a motion seeking entry of the Sale Order (as well as approval of the purchase of the Purchased Assets by ERP Iron Ore, and a finding that ERP Iron Ore is a good faith purchaser pursuant to section 363(m) of the Bankruptcy Code) pursuant to an expedited sale process (to the extent permitted by the Bankruptcy Court), in form and substance satisfactory to Initial Buyer, ERP Iron Ore and the Sellers.

"**Security Agreement**" means that certain Security Agreement, dated May 20, 2013, among Magnetation LLC, Mag Finance Corp., the guarantors listed thereunder, and Wilmington Trust, National Association, as collateral agent.

"**Settlement Agreement**" means that certain Global Settlement Agreement, dated as of August 26, 2016, among, inter alios, Magnetation, Inc., Magnetation LLC, Mag Lands, LLC, Mag Finance Corp., Mag Mining, LLC and Mag Pellet LLC.

"**Subsidiary**" means, with respect to any Person, any corporation, limited liability company, partnership, association or other business entity of which (i) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more other Subsidiaries of such Person or a combination thereof, or (ii) if a limited liability company, partnership, association or other business entity, a majority of the partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by any Person or one or more Subsidiaries of such Person or a combination thereof.

"**Tax**" means (i) any and all taxes, charges, levies or other similar assessments or liabilities in the nature of a tax, including income, gross receipts, ad valorem, premium, value-added, net worth, capital stock, capital gains, documentary, recapture, alternative or add-on minimum, disability, estimated, registration, recording, excise, real property, personal property, extraction, sales, use, license, lease, service, service use, transfer, withholding, employment, unemployment, insurance, social security, business license, business organization,

environmental, workers compensation, payroll, employer health, profits, severance, stamp, occupation, windfall profits, customs, duties, gift, estate, franchise, production, inventory, unclaimed property, escheat and other taxes of any kind whatsoever imposed by a Governmental Authority, and any interest, fines, penalties, assessments or additions to tax imposed with respect to such items or any contest or dispute thereof or (ii) liability for the payment of any amounts of the type described in (i) as a result of being party to any agreement or any express or implied legal or contractual obligation to indemnify or otherwise assume or succeed to the liability of any other Person.

"**Taxing Authority**" means any Governmental Authority having or purporting to exercise jurisdiction with respect to any Tax.

"**Tax Return**" means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

"**Technology License Agreement**" means the Technology License Agreement, dated as of October 4, 2011, by and between the Company and Magnetation, Inc. and as amended on May 16, 2013 and further amended on May 20, 2013 by a Consent and Waiver Regarding Grant of Security Interest in Technology License.

"**Transaction Documents**" means the Contracts Assignment and Assumption Agreements, the General Assignments and Bills of Sales, the Lease Assignment and Assumption Agreements, the Restated and Amended Technology License Agreement, the ERP Assumption, the Mag Entities Support Agreement, and each other document, agreement or instrument executed and delivered in connection herewith.

"**White County TIF Bonds**" means the (i) White County, Indiana Taxable Economic Development Revenue Bond, Series 2013 (Mag Pellet, LLC Project) issued in the original principal amount of $23,470,000, (ii) related Trust Indenture by and between White County, Indiana and Old National Trust Company dated as of June 1, 2013, (iii) related Loan Agreement between Mag Pellet, LLC and White County, Indiana dated as of June 1, 2013, and (iv) related MAG PELLET, LLC NOTE, SERIES 2013 executed by Mag Pellet, LLC in favor of White County, Indiana, each as amended from time to time.

"**Wind-down Cash**" means the amount of cash, if any, necessary for the Sellers to maintain, as of the Closing Date, a book balance in the Operating Account of $500,000 plus (i) accrued and unpaid wages and benefits of the Business Employees as of the Closing Date that constitute administrative expense claims against the Sellers, (ii) accrued and unpaid professional fees required to be paid pursuant to the order approving the DIP Credit Agreement that constitute administrative expense claims against the Sellers, and (iii) amount necessary to make the Sellers' required payments under the Wind-down Incentive and Retention Plan (and defined in the *Order Approving the Debtors' Wind-down Incentive and Retention Plan*, entered by the Bankruptcy Court on October 25, 2016).

"**Withdrawal Liability**" means liability to a Multiemployer Plan as a result of a "complete withdrawal" or "partial withdrawal" from such Multiemployer Plan, as those terms are defined in Part I of Subtitle E of Title IV of ERISA.

"**Workers' Compensation Liabilities**" means any liabilities or benefit obligations related to workers' compensation claims and benefits arising under Applicable Law.

(a) Each of the following terms is defined in the Section set forth opposite such term:

Term	**Section**
Agreement	Preamble
Allocation	2.07(b)
Allocation Statement	2.07(b)
Assumed Liabilities	2.03
Assumed Contracts	2.01(e)
Bankruptcy Case	Recitals
Bankruptcy Court	Recitals
Business Employee	9.01(a)
Buyer Plan	9.02(b)(i)
Clarke Guaranty	2.11(a)
Closing	2.08
Company	Preamble
Company Subsidiaries	Preamble
Confidentiality Agreement	7.06(a)
Credit Release	2.07(a)
Cure Costs	2.05(a)
e-mail	12.01
Effective Date	Preamble
End Date	11.01(b)
ERP Assumption	2.11(b)
ERP Guaranty	2.11(a)
ERP Notes	2.11(a)
ERP Iron Ore	Preamble
Excluded Assets	2.02
Excluded Liabilities	2.04
FCPA	3.18
Initial Buyer	Preamble
Insurance Policies	3.12
Licenses	3.08(a)(ii)
Litigation	3.13(a)
Mag Entities	Recitals
Mag Entities Support Agreement	Recitals
Material Contract	3.11(b)
Minnesota Courts	12.07
New Indenture	2.11(a)
New Security Agreement	2.11(a)

Term	Section
Non-Recourse Party	5.04(b)
Offered Employees	9.02(a)
Party	Preamble
Permits	3.08(a)(i)
Purchase Price	2.07(a)
Purchased Assets	2.01
Purchased Real Property	2.01(b)
Removed Contract	2.05(c)
Restated and Amended Technology License Agreement	Recitals
Statutory Lien	2.04(h)
Transfer Taxes	8.01(b)
Transferred Employees	9.02(a)
Transferred Permits/ Licenses	2.01(g)
WARN Act	9.01(f)

Section 1.02. Other Definitional and Interpretative Provisions. The words "hereof", "herein" and "hereunder" and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof. References to Articles, Sections, Exhibits and Schedules are to Articles, Sections, Exhibits and Schedules of this Agreement unless otherwise specified. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Exhibit or Schedule but not otherwise defined therein, shall have the meaning as defined in this Agreement. Any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular. Whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation", whether or not they are in fact followed by those words or words of like import. "Writing", "written" and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form. References to any statute shall be deemed to refer to such statute as amended from time to time and to any rules or regulations promulgated thereunder. References to any agreement or contract are to that agreement or contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof. References to any Person include the successors and permitted assigns of that Person. References from or through any date mean, unless otherwise specified, from and including or through and including, respectively. References to "law", "laws" or to a particular statute or law shall be deemed also to include any and all Applicable Law. To the extent there is any inconsistency between the terms of this Agreement and any exhibits, schedules or ancillary documents related to this Agreement, including the Disclosure Schedule, this Agreement shall govern.

ARTICLE 2
PURCHASE AND SALE

Section 2.01. Purchase and Sale. Upon the terms and subject to the conditions of this Agreement, Buyer agrees to purchase from the Sellers, and the Sellers agree to sell, convey, transfer, assign and deliver, or cause to be sold, conveyed, transferred, assigned and delivered, to Buyer at the Closing, free and clear of any and all Encumbrances of any kind or nature whatsoever, other than Permitted Encumbrances, all of the Sellers' right, title and interest in, to and under all of each Seller's assets and properties other than the Excluded Assets (the "**Purchased Assets**"), including, without limitation, the following assets and properties:

(a) the Owned Real Property;

(b) (i) the Leases listed on Schedule 2.01(b), in each case, as each such Lease may have been amended or otherwise modified prior to the date of this Agreement, and (ii) the Leased Real Property listed on Schedule 2.01(b) (as such schedule may be modified from time to time through the date of Closing) (together, the "**Assumed Leases**," and with the Owned Real Property, the "**Purchased Real Property**");

(c) the buildings, facilities, infrastructure, fixtures and improvements located on the Purchased Real Property, including, but not limited to, the concentrate plants in Keewatin, MN (Plant One), Bovey, MN (Plant Two), and Grand Rapids, MN (Plant Four), a rail load-out facility (the Jessie Load-Out), and a pellet plant in Reynolds, IN;

(d) all machinery, equipment, vehicles, tools, servers and networking equipment, handling equipment, furniture, furnishings, computer hardware and peripheral equipment, production technology, rail and truck terminal equipment, supplies, accessories, fixed assets and other personal property and interests, and all spare parts, tooling, dies or other items related to the operation or repair of the machinery and equipment, wherever located, other than any Inventory (as such term is defined in the Settlement Agreement), including, but not limited to, those listed on Schedule 2.01(d) , and all of the Sellers' rights under warranties, indemnities and similar rights against third parties with respect hereto;

(e) all right, title and interest of the Sellers now or hereafter existing, in, to and under (i) the Contracts listed on Schedule 2.01(e) (as such schedule may be modified from time to time through the date of Closing) (collectively, the "**Assumed Contracts**") and (ii) such other Contracts entered into by a Seller in the ordinary course of business after the date hereof as permitted pursuant to Section 5.01 and Section 5.02 and added to Schedule 2.01(e) by Buyer pursuant to Section 2.05, in each case, as each such Contract may have been amended or otherwise modified prior to the date of this Agreement;

(f) all deposits (including security deposits for rent, electricity, telephone, other utilities or otherwise) and all prepaid or deferred payables, charges and expenses (including for *ad valorem* taxes, leases and rentals), including, but not limited to, those listed on Schedule 2.01(f);

(g) subject to Section 7.03, all the Permits, Mineral Tenures and the Licenses that relate to the Purchased Assets or a Seller's business, which are set forth on Schedule 3.08 (the "**Transferred Permits/Licenses**");

(h) all water rights, permits, consents or approvals from a Governmental Authority, and other riparian rights of any kind relating to the business of any Seller, or any of the Transferred Permits/Licenses;

(i) all rights of the Sellers to use rail cars, tracks and sidetracks pursuant to any Assumed Contract;

(j) all books, records, files, personnel files (to the extent relating to Transferred Employees), data, reports, marketing, advertising and promotional materials, cost and pricing information, business plans, manuals, blueprints, archives, drawings, research and development files, and other documents, communications, or records, whether in hard copy or computer or other format, related to the Purchased Assets or Assumed Liabilities, including any information relating to any Tax;

(k) all items usually classified as inventory for financial reporting purposes other than any Inventory (as such term is defined in the Settlement Agreement) sold pursuant to the Settlement Agreement;

(l) all accounts receivable (whether current or non-current) not sold pursuant to the Settlement Agreement;

(m) all negotiable instruments, cash equivalents, securities, instruments, accounts and notes receivable, unpaid drafts or checks, letters of credit, performance and other bonds, advance payments, prepaid expenses and any other prepayments in favor of Seller, discounts, credits, refunds, rebates, and any other rights to receive payments of a Seller, in each case, that have not been sold pursuant to the Settlement Agreement;

(n) (i) all unrestricted cash from the Sellers' operating account, account number ending 8901, at JPMorgan Chase Bank, N.A. (the "**Operating Account**"), and (ii) cash or cash receivables of the Sellers other than cash that constitutes an Excluded Asset under Section 2.02(e), (f) or (g);

(o) all refunds owed the Sellers, including, but not limited to, insurance premiums, amounts owed from vendors and taxing agencies;

(p) all Intellectual Property Rights of the Sellers, including all rights granted from third parties to any Seller relating to any Intellectual Property;

(q) all proceeds, reserves, benefits (by assignment or other method acceptable to Buyer and Sellers), rights, or claims of any Seller or any of its Subsidiaries under the Insurance Policies;

(r) any other rights or claims of any Seller with respect to the Purchased Assets,

(s) all goodwill associated with the business of any Seller and/or the Purchased Assets;

(t) the Intercompany Note;

(u) the White County TIF Bonds; and

(v) all other assets of the Sellers that are not Excluded Assets and that have not been sold pursuant to the Settlement Agreement.

Section 2.02. Excluded Assets. Notwithstanding anything herein to the contrary, the following assets and properties of the Sellers (the "**Excluded Assets**") shall be excluded from the Purchased Assets:

(a) all books, records, files and documents, whether in hard copy or computer format, prepared in connection with this Agreement or the transactions contemplated hereby and all minute books and corporate records of the Sellers;

(b) all rights of the Sellers arising under this Agreement or the transactions contemplated hereby;

(c) all Contracts other than those referenced in Section 2.01(e) (as amended from time to time through Closing);

(d) all real property leases and subleases to which any Seller is a party which are not listed on Schedule 2.01(b);

(e) the Wind-down Cash;

(f) all cash in the Carve-out Account (as defined in the DIP Credit Agreement) as of the date of this Agreement;

(g) all cash in the Sellers' deposit account, account number ending 0655, at JPMorgan Chase Bank, N.A. as of the date of this Agreement;

(h) all Avoidance Actions, or proceeds thereof;

(i) all equity interests in the Subsidiaries of the Company; and

(j) subject to Section 2.01(q), the Insurance Policies.

Section 2.03. Assumed Liabilities. Upon the terms and subject to the conditions of this Agreement, effective at the time of the Closing, Buyer shall assume, become obligated for, and agree to pay and perform when due, only the following Liabilities of the Sellers (collectively, the "**Assumed Liabilities**"), and no other Liabilities:

(a) subject to Section 2.03(c), all Liabilities of the applicable Sellers first arising and accruing after the Closing (and for the avoidance of doubt, other than any Liability arising out of or related to any breach, default (whether monetary or non-monetary), act or omission that

occurred on or prior to the Closing other than Cure Costs) under the Assumed Leases and the Assumed Contracts;

(b) subject to Section 2.03(c), all Liabilities first arising and accruing after the Closing (and for the avoidance of doubt, other than any Liability arising out of or related to any breach, default (whether monetary or non-monetary), act or omission that occurred on or prior to the Closing) out of or relating to the Transferred Permits/Licenses;

(c) all Liabilities pursuant to any Environmental Law attributable to Transferred Permits/Licenses arising out of or relating to (i) environmental cleanup costs and compliance at sites owned or operated by Buyer after the Closing and (ii) any Hazardous Materials released, stored, deposited, discharged, buried, dumped or disposed of in connection with the operation of the Purchased Assets, as to each, other than Excluded Pre-Closing Fines;

(d) the real estate Taxes, production Taxes and royalties accrued and unpaid by the Sellers as of the Closing Date that are itemized (including the estimated amounts thereof, which estimates are to the best of Sellers' Knowledge) on Schedule 2.03(d); provided that the actual amounts of such Taxes and royalties may differ from the scheduled estimated amounts and such actual amounts shall constitute Assumed Liabilities hereunder; and

(e) all Liabilities of any kind or character resulting from or arising out of or in connection with Buyer's use, operation, possession or ownership of or interest in the Purchased Assets first arising and accruing following the Closing (and for the avoidance of doubt, subject to Section 2.03(c), other than any Liability arising out of or related to any breach, default (whether monetary or non-monetary), act or omission that occurred on or prior to the Closing other than Cure Costs).

Section 2.04. Excluded Liabilities. Notwithstanding any provision in this Agreement or any other writing to the contrary, Buyer is assuming only the Assumed Liabilities and is not assuming any other Liability of the Sellers of whatever nature, whether presently in existence or arising hereafter and whether or not related to the Purchased Assets. All such other Liabilities shall be retained by and remain Liabilities of the applicable Seller (all such Liabilities not being assumed being herein referred to as the "**Excluded Liabilities**"). Notwithstanding any provision in this Agreement or any other writing to the contrary, the Excluded Liabilities include, without limitation, the following:

(a) all Liabilities for Taxes (A) of any Seller or its stockholders (or members) for any Tax period (or portion thereof) (including any liability of any Seller for the Taxes of any other Person under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local or foreign law), as a transferee or successor, by contract or otherwise) or (B) arising from or attributable to the ownership of the Purchased Assets for any Tax period (or portion thereof), as to each, ending on or prior to the Closing Date, in each case, other than Liabilities that are Assumed Liabilities under Section 2.03(d);

(b) any Liability of the Sellers under any Indebtedness and any obligations or liability under the DIP Credit Agreement or any other debtor in possession financing incurred by the Sellers during the Bankruptcy Case;

(c) any Liabilities relating to any current or former employee of the Sellers or any beneficiary thereof, including any Liability under any employee benefits, severance or compensation arrangement and any bonus liability (if any) to employees of the Sellers or Magnetation, Inc.;

(d) any Liability to the extent relating to or arising out of or relating to an Excluded Asset;

(e) all Liabilities of the applicable Sellers arising prior to the Closing under the Assumed Leases and the Assumed Contracts other than Cure Costs;

(f) all Liabilities arising prior to the Closing out of or relating to the Permits, Mineral Tenures or the Licenses other than Liabilities that are Assumed Liabilities under Section 2.03(c);

(g) Excluded Pre-Closing Fines;

(h) all statutory Liens against the Purchased Assets (and related Liabilities), such as Tax, carriers', miner's, warehousemen's, railman's, builder's, materialmen's and mechanic's Liens, including, but not limited to, those listed on Schedule 2.04(h) (collectively, the "Statutory Liens");

(i) all Liabilities relating to, asserted in, or arising out of the Bankruptcy Cases, including, but not limited to, scheduled claims, proofs of claim that were or could have been filed (assuming proper notice had been provided), applications for payment of any administrative expense claim or by any professional in the Bankruptcy Cases, and claims against the Sellers pursuant to Sections 503 or 507 of the Bankruptcy Code, in each case, other than Cure Costs and Liabilities that are Assumed Liabilities under Section 2.03(c);

(j) all Liabilities arising out of or in connection with actions, litigation, or proceedings (whether instituted prior to or after the Closing) for acts or omissions that occurred, or arise from events that occurred, prior to the Closing, in each case, other than Liabilities that are Assumed Liabilities under Section 2.03(c);

(k) any and all COBRA Liabilities, Withdrawal Liabilities, or Liabilities relating to a collective bargaining agreement or Benefit Plan;

(l) any and all Liabilities and related costs and expenses arising from or relating to termination of employment of any employees by Sellers or their Affiliates that occurs prior to Closing, including a "plant closing," "mass layoff" or group termination or similar event under the WARN Act or any similar federal, state or local Law (including as a result of the consummation of the transactions contemplated by this Agreement);

(m) all Liabilities of any Seller related to activities conducted prior to or in connection with the Closing, including all penalties, fines, settlements, interest, costs and expenses incurred as a result of any actual or alleged violation by Seller of any Law prior to the Closing, as well as any fees, expenses, Taxes and other expenses incurred in connection with this Agreement or otherwise related to the Bankruptcy Case, in each case, other than Cure Costs and Liabilities that are Assumed Liabilities under Section 2.03(c);

(n) any claims for infringement, misappropriation, misuse or violation of an Intellectual Property Right of a third party arising prior to the Closing; and

(o) Liabilities arising out of or in connection with the Company 401(k) Plans, including, without limitation, any Liability related to contributions for bonuses paid.

Section 2.05. Assignment of Assumed Contracts and Rights; Cure Amounts. (a) The Sellers shall transfer and assign or cause to be transferred and assigned all Assumed Contracts and Assumed Leases to ERP Iron Ore and ERP Iron Ore shall assume all Assumed Contracts and Assumed Leases from the Sellers, as of the Closing Date pursuant to section 365 of the Bankruptcy Code and the Sale Order. ERP Iron Ore shall comply with all requirements of section 365 of the Bankruptcy Code necessary to permit such assignment and assumption. In connection with such assignment and assumption, ERP Iron Ore shall either (i) pay all cure amounts to cure all defaults under such Assumed Contracts and Assumed Leases to the extent required by section 365(b) of the Bankruptcy Code at the time of the assumption thereof and assignment to ERP Iron Ore as provided hereunder (such amounts, the "**Cure Costs**") or (ii) pay such Cure Costs to the Sellers and the Sellers shall, at the express written request of ERP Iron Ore, on or prior to Closing, pay such Cure Costs on account of such Assumed Contracts and Assumed Leases. The Cure Costs for each Assumed Contract are set forth opposite the name of each Assumed Contract set forth on Schedule 2.01(e) and for each Assumed Lease are set forth opposite the name of each Lease set forth on Schedule 3.07(a). ERP Iron Ore as nominee shall have all rights and obligations of Buyer with respect to such Assumed Contracts and Assumed Leases.

(b) The Sale Order shall provide that as of the Closing, the Sellers shall assign or cause to be assigned to ERP Iron Ore the Assumed Contracts and the Assumed Leases, each of which shall be identified by the name and date of the Assumed Contract (if available) and the Lease, the other party to the Assumed Contract and the Lease and the address of such party for notice purposes, all included on an exhibit attached to either the Sale Motion or a subsequently filed motion for authority to assume and assign such Assumed Contracts and Assumed Leases. Such exhibits shall also set forth the amounts necessary to cure any defaults under each of the Assumed Contracts and the Assumed Leases as determined by the Sellers based on the Sellers' books and records or as otherwise determined by the Bankruptcy Court.

(c) Notwithstanding anything herein to the contrary, to the extent the assignment of any Assumed Contract or Lease is, after giving effect to sections 363 and 365 of the Bankruptcy Code, not permitted by law or not permitted without the consent of another Person, and such restriction cannot be effectively overridden or canceled by the Sale Order or other related order of the Bankruptcy Court, then this Agreement shall not constitute an agreement to assign or an assignment or transfer of the same (each a "**Removed Contract**"), and (subject to Section 7.01) the Sellers and ERP Iron Ore shall use commercially reasonable efforts to obtain any such required consent(s) and once obtained, such Removed Contract will be assigned and assumed as though it were one of the Assumed Leases or Assumed Contracts, as applicable. These commercially reasonable efforts shall not require any payment or other consideration from any Seller, Initial Buyer or ERP Iron Ore (other than the Cure Costs, which shall be the responsibility of ERP Iron Ore), and any such consent shall contain terms and conditions acceptable to the Parties. If any such consent is not obtained, or if any attempted assignment would be ineffective

or would impair ERP Iron Ore's rights under the Purchased Asset in question, the Sellers and ERP Iron Ore shall, subject to any approval of the Bankruptcy Court that may be required, use commercially reasonable efforts for a reasonable period of time following the Closing, or until such earlier time as the Sellers are dissolved or the Bankruptcy Cases are closed, to obtain for ERP Iron Ore the benefits and burdens thereunder; *provided*, that in no event shall ERP Iron Ore be obligated to accept any amendment to the terms of any Assumed Contract or Assumed Lease or Transferred Permit/License or any additional conditions with respect to any Assumed Contract or Assumed Lease or Transferred Permit/License. These commercially reasonable efforts shall not require any payment or other consideration from any Seller or ERP Iron Ore (other than the Cure Costs, which shall be the responsibility of the ERP Iron Ore).

(d) Notwithstanding anything in this Agreement to the contrary, to the extent permitted by the Bankruptcy Court, ERP Iron Ore may, from time to time in its discretion (with or without cause), at any time prior to thirty (30) days after the Closing Date, amend or revise Schedule 3.07(a), Schedule 2.01(b), Schedule 2.01(e), or Schedule 3.08 in order to (i) add any Lease, equipment, fixed asset or other tangible asset, Permit, License, Mineral Tenure, or Contract, as applicable, to such Schedules, or (ii) eliminate any Lease, equipment, fixed asset or other tangible asset, Permit, License, Mineral Tenure or Contract, as applicable, from such Schedules. Automatically upon addition of any Lease, equipment, fixed asset or other tangible asset, Permit, License, Mineral Tenure or Contract to Schedule 3.07(a), Schedule 2.01(b), Schedule 2.01(e), or Schedule 3.08, as applicable, by ERP Iron Ore in accordance with the previous sentence, such Lease shall be an Assumed Lease, such Contract shall be an Assumed Contract, such equipment, fixed asset or other tangible asset shall be a Purchased Asset and such Permit, Mineral Tenure or License shall be a Transferred Permit/License, as applicable, for all purposes of this Agreement. Automatically upon the deletion of any Lease from Schedule 2.01(b) or the deletion of any equipment, fixed asset or other tangible asset, Permit, License, Mineral Tenure or Contract from Schedule 3.07(a), Schedule 2.01(e), or Schedule 3.08 by ERP Iron Ore in accordance with the first sentence of this Section 2.05(d), such Lease shall not be an Assumed Lease, such Contract shall not be an Assumed Contract, such equipment, fixed asset or other tangible asset shall be an Excluded Asset and such Transferred Permit/License shall no longer be a Transferred Permit/License for all purposes of this Agreement, and no Liabilities arising thereunder or relating thereto shall be assumed by ERP Iron Ore or be the obligation, liability or responsibility of ERP Iron Ore. If any Lease is added to the list of Assumed Leases or any Contract is added to the list of Assumed Contracts, then the Sellers shall take such steps as are reasonably necessary to cause such Lease or such Contract, as the case may be, to be assumed and assigned to ERP Iron Ore as promptly as possible at or following the Closing (subject to any required approvals of the Bankruptcy Court); *provided* that the foregoing shall not require any payment or other consideration from any Seller, Initial Buyer or ERP Iron Ore (other than the Cure Costs, which shall be the responsibility of ERP Iron Ore); and *provided further* that the foregoing shall not apply to any Lease or Contract that has been rejected by the Sellers pursuant to an order of the Bankruptcy Court prior to ERP Iron Ore's proposed amendment or revision. If, after Closing, any Assumed Lease is removed from the list of Assumed Leases or any Assumed Contract is removed from the list of Assumed Contracts, then ERP Iron Ore shall assume and be responsible for all administrative expense claims of the applicable non-Debtor counterparty first arising and accruing post-Closing (and for the avoidance of doubt, other than any Liability arising out of or related to any breach, default (whether monetary or non-monetary), act or omission that occurred on or prior to the Closing)

that are allowed against the Sellers by order of the Bankruptcy Court, and such claims shall be deemed Assumed Liabilities.

Section 2.06. Intentionally Omitted.

Section 2.07. Purchase Price; Allocation of Purchase Price. (a) On the terms and subject to the conditions set forth in this Agreement, as consideration for the Purchased Assets, in addition to the assumption by ERP Iron Ore of the Assumed Liabilities, Initial Buyer shall instruct the DIP Agent to release the Sellers that are borrowers or guarantors under the DIP Credit Agreement from Indebtedness thereunder having an aggregate principal amount equal to $22,500,000.00 (the "**DIP Credit Release**" or the "**Purchase Price**").

(b) Within one hundred twenty (120) days following the Closing Date, Buyer shall deliver to the Company a statement (the "**Allocation Statement**"), allocating the Purchase Price (plus Assumed Liabilities, to the extent properly taken into account under Section 1060 of the Code) among the Purchased Assets in accordance with Section 1060 of the Code and the U.S. Treasury regulations thereunder (and any similar provision of state, local or non-U.S. law, as appropriate), as of the Closing Date (the "**Allocation**"). The Allocation shall be considered final and binding on the Parties unless, within 20 Business Days after the delivery of the Allocation Statement, the Company notifies Buyer in writing that the Sellers have any good faith objection to the Allocation set forth in the Allocation Statement and the writing sets forth in reasonable detail (i) the items or amounts with which the Sellers disagree and the basis for such disagreement, and (ii) the Sellers' proposed corrections to the Allocation Statement. If the Company makes such a timely objection, Buyer and the Company shall work in good faith to resolve such dispute within twenty (20) days from the date the Company delivers the objection to Buyer. In the event that Buyer and the Company are unable to resolve such dispute within the twenty (20) day period, the issue(s) in dispute will be submitted to the Auditor for resolution. The determination of the Auditor shall be set forth in a written notice delivered no later than thirty (30) days after the issue(s) in dispute have been submitted to the Auditor, to Buyer and the Company by the Auditor and will be final, binding and conclusive on the Parties. Buyer, on the one hand, and the Sellers, on the other hand, shall each bear fifty percent (50%) of the fees and expenses of the Auditor for such determination. Buyer and the Sellers will use all commercially reasonable efforts to cause the Auditor to render its decision as promptly as practicable, including by promptly complying with all reasonable requests by the Auditor for information, books, records and similar items. In the event of any adjustments to the Purchase Price, the Parties shall cooperate to adjust the Allocation in accordance with the principles of this Section 2.07(b).

(c) The Sellers and Buyer agree to (i) be bound by the Allocation (as determined pursuant to clause (b) above) for purposes of determining Taxes and (ii) act in accordance with the Allocation in the preparation, filing and audit of any Tax Return (including filing Form 8594 with their U.S. federal income Tax Returns for the taxable year that includes the Closing Date and any corresponding form required to be filed to a state or local Taxing Authority); *provided,* however, that nothing contained herein shall prevent Buyer or the Sellers from settling any proposed deficiency or adjustment by any Taxing Authority based upon or arising out of the Allocation, and neither Buyer nor the Sellers shall be required to litigate before any court any proposed deficiency or adjustment by any Taxing Authority challenging such Allocation.

Section 2.08. Closing. The closing (the "**Closing**") of the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities by ERP Iron Ore hereunder shall take place at the offices of Dentons US LLP, 1221 Avenue of the Americas, New York, New York 10020, 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 10 (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 Initial Buyer, ERP Iron Ore and the Sellers may agree.

Section 2.09. Delivery of Purchased Assets and Procedure at Closing. At the Closing, the Sellers shall deliver to ERP Iron Ore (and Initial Buyer, with respect to deliveries described in Section 2.09(i), (m) and (n)) the following:

(a) evidence satisfactory to ERP Iron Ore that the Minimum Cash Condition has been satisfied;

(b) to the extent the Statutory Lien Condition has been satisfied, evidence satisfactory to ERP Iron Ore that the Statutory Lien Condition has been satisfied;

(c) the General Assignments and Bills of Sale to ERP Iron Ore for the Purchased Assets being purchased by ERP Iron Ore, in each case, duly executed by the applicable Sellers;

(d) the Lease Assignment and Assumption Agreements to ERP Iron Ore for the Assumed Leases, in each case, duly executed by the applicable Sellers, together with original execution copies of all underlying Leases to the extent reasonably practicable;

(e) the Contracts Assignment and Assumption Agreements to ERP Iron Ore for the Assumed Contracts being assumed by ERP Iron Ore, in each case, duly executed by the applicable Sellers, together with original execution copies of all underlying Contracts to the extent reasonably practicable;

(f) a special warranty deed (or similar deed required in a particular jurisdiction where the Owned Real Property is located) to the Owned Real Property in recordable form and in accordance with all applicable statutory requirements, to ERP Iron Ore, duly executed by the applicable Sellers;

(g) all documents of title and instruments of conveyance (duly executed by the applicable Sellers) necessary to transfer record and/or beneficial ownership to ERP Iron Ore of all automobiles, trucks and trailers owned by the Sellers (and any other Purchased Assets owned by the Sellers which require execution, endorsement and/or delivery of a document in order to vest record or beneficial ownership thereof in ERP Iron Ore) that are included in the Purchased Assets being purchased by ERP Iron Ore;

(h) such other deeds, endorsements, assignments and other customary instruments (duly executed by the applicable Sellers) as are requested by ERP Iron Ore to vest in ERP Iron Ore good and marketable title to the Purchased Assets (limited, in the case of the Owned Real Property, to special warranty of title) in the jurisdictions in which the Purchased Assets are

located, including an affidavit to ERP Iron Ore's title insurance company of the type customarily provided by sellers of real property and a Certificate of Real Estate Value (PE20) to be completed to the reasonable satisfaction of ERP Iron Ore;

(i) a certificate, dated the Closing Date and signed by an authorized officer of the Company pursuant to Section 10.02(c) hereof;

(j) assignments to ERP Iron Ore of the Intercompany Note and the White County TIF Bonds;

(k) all documents and information concerning Transferred Permits/Licenses;

(l) Intentionally Omitted;

(m) a copy of the final Sale Order entered by the Bankruptcy Court;

(n) all other documents required to be delivered by the Sellers on or prior to the Closing Date pursuant to this Agreement or as may be reasonably requested by Initial Buyer and ERP Iron Ore; and

(o) the Note Cancellation and Release Agreement attached as Exhibit B to the Mag Entities Support Agreement, duly executed and joined by the Company as provided therein.

Section 2.10. Buyer's Deliveries at Closing. At the Closing, Initial Buyer and ERP Iron Ore, as applicable, shall deliver to the Sellers (and to each other, with respect to the item referenced in clause (f)):

(a) the General Assignments and Bills of Sale for the Purchased Assets duly executed by ERP Iron Ore;

(b) the Lease Assignment and Assumption Agreements to Buyer for the Assumed Leases duly executed by ERP Iron Ore;

(c) the Contracts Assignment and Assumption Agreements for the Assumed Contracts duly executed by ERP Iron Ore;

(d) a certificate of Initial Buyer certifying the delivery of directions instructing the DIP Agent to effect the DIP Credit Release;

(e) Intentionally Omitted.

(f) a certificate, dated the Closing Date and signed by the Chief Executive Officer or Chief Financial Officer of each of Initial Buyer and ERP Iron Ore pursuant to Section 10.03(c) hereof; and

(g) all other documents required to be delivered by Initial Buyer or ERP Iron Ore on or prior to the Closing Date pursuant to this Agreement.

Section 2.11. ERP Assumption.

(a) Immediately following the entry of the Sale Order by the Bankruptcy Court,

(w) ERP Iron Ore shall execute an indenture among ERP Iron Ore, the guarantors listed on the signature pages thereto and Wilmington Savings Fund Society, FSB, as trustee, collateral agent, paying agent, registrar and calculation agent, in the form attached hereto as Exhibit G (the "**New Indenture**"), committing to issue and deliver at Closing to the lenders party to the DIP Credit Agreement, pro rata according to their percentage holdings of loans governed by the DIP Credit Agreement (which allocation shall be provided to ERP Iron Ore prior to the Closing),floating rate senior secured amortizing PIK toggle notes due 2019 (the "**ERP Notes**") in the aggregate principal amount of $22,500,000.00 which shall be secured by certain assets of ERP Iron Ore and the Coke Plant of ERP Compliant COKE, LLC pursuant to a security agreement the form of which is attached hereto as Exhibit H (the "**New Security Agreement**"), which ERP Notes shall be substantially in the form of Exhibit A of the New Indenture attached hereto as Exhibit G;

(x) ERP Iron Ore shall cause ERP Compliant COKE, LLC to execute the New Indenture and guaranty the ERP Notes pursuant to the New Indenture (the "**ERP Guaranty**") and secure such guaranty by the Coke Plant owned by ERP Compliant COKE, LLC, pursuant to the New Security Agreement; and

(y) (i) Tom Clarke shall execute in favor of Wilmington Savings Fund Society, FSB, an unsecured guaranty of the ERP Notes, which unsecured guaranty shall be in the form attached hereto as Exhibit I, and (ii) Ana Clarke shall execute in favor of Wilmington Savings Fund Society, FSB, an unsecured guaranty in the form attached hereto as Exhibit I ((i) and (ii) together, the "**Clarke Guaranty**"). The effectiveness of the New Indenture, ERP Notes, the New Security Agreement, the ERP Guaranty and the Clarke Guaranty shall be expressly conditioned on a Closing of this Agreement by ERP Iron Ore.

(b) Contemporaneously with ERP Iron Ore, ERP Compliant COKE, LLC, Tom Clarke and Ana Clarke's delivery of their executed signature pages to the New Indenture, New Security Agreement, ERP Guaranty and/or Clarke Guaranty, Initial Buyer, ERP Iron Ore and the Sellers shall execute and deliver an assignment, assumption and novation agreement, substantially in the form attached hereto as Exhibit J (the "**ERP Assumption**"), pursuant to which (i) Initial Buyer's rights and obligations hereunder as Buyer shall be assigned to and assumed by ERP Iron Ore, as to each, first arising from and after the date of the ERP Assumption (and for the avoidance of doubt, other than any Liability (in this instance, as defined in the ERP Assumption) arising out of or related to any breach, default (whether monetary or non-monetary), act or omission that occurred on or prior to the date of the ERP Assumption; provided that ERP Iron Ore shall undertake the performance obligations of Initial Buyer hereunder commenced prior to the date of the ERP Assumption that do not concern a Liability (in this instance, as defined in the ERP Assumption) arising out of or relating to a breach or default hereunder), (ii) the Purchased Assets and Assumed Liabilities may only be assigned to and assumed by ERP Iron Ore, (iii) ERP Iron Ore shall represent and warrant to the Sellers with respect to the matters set forth in Article 4 hereof, as well as with respect to the ability of ERP

Iron Ore to satisfy the conditions contained in sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code with respect to the Assumed Contracts being assumed by ERP Iron Ore, and (iv) the Sellers shall release and discharge Initial Buyer and their Affiliates from all Liabilities, covenants, undertakings, obligations, and duties under this Agreement assumed and assigned to ERP Iron Ore in the ERP Assumption; *provided*, that nothing in this Section 2.11 or the ERP Assumption shall affect Initial Buyer's obligations under Section 6.03, Section 11.01(i), or with respect to the DIP Credit Release at Closing as contemplated by Section 2.07 and Section 2.10(d). ERP Iron Ore shall be named as assignee or transferee in the closing documents and the Sale Order shall so provide.

(c) Initial Buyer hereby directs that all documents required to be delivered pursuant to Sections 2.09(c), (d), (e), (f), (g), (h), (j) and (k) name ERP Iron Ore as the buyer, grantee or assignee, as applicable, thereunder.

(d) Notwithstanding anything in this Agreement to the contrary, the Parties acknowledge and agree that: (x) ERP Iron Ore, and not Initial Buyer, shall perform all of the obligations of Buyer under this Agreement first arising from and after the date of the ERP Assumption (and for the avoidance of doubt, other than any Liability (in this instance, as defined in the ERP Assumption) arising out of or related to any breach, default (whether monetary or non-monetary), act or omission that occurred on or prior to the date of the ERP Assumption; provided that ERP Iron Ore shall undertake the performance obligations of Initial Buyer hereunder commenced prior to the date of the ERP Assumption that do not concern a Liability (in this instance, as defined in the ERP Assumption) arising out of or relating to a breach or default hereunder), (y) ERP Iron Ore, and not Initial Buyer, shall perform all of the obligations of Buyer under Sections 2.05, 6.02, 7.01(a)(ii) and (e) and 7.02 of this Agreement prior to the date of the ERP Assumption, and (z) ERP Iron Ore shall use its commercially reasonable efforts to assist the Initial Buyer in performance of its other affirmative obligations under this Agreement prior to the date of the ERP Assumption; provided, Initial Buyer shall perform the obligations pursuant to Section 6.03, Section 11.01(i) and those pursuant to Section 2.10(d) with regard to the DIP Credit Release.

(e) The Parties agree that ERP Iron Ore has standing as a party in interest in the Bankruptcy Cases regarding all matters relating to this Agreement, both prior to and after the ERP Assumption.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES OF THE SELLERS

Except as set forth in the Disclosure Schedule, each Seller represents and warrants, on a joint and several basis with the other Sellers, to Initial Buyer and to ERP Iron Ore, as of the date of this Agreement and as of the Closing Date, that:

Section 3.01. Corporate Existence and Power. Such Seller is a corporation or limited liability company, as applicable, duly incorporated or duly formed, as applicable, validly existing and in good standing under the laws of its jurisdiction of incorporation or formation, as applicable, and has material all corporate or limited liability company powers and all material governmental licenses, authorizations, qualifications, permits, consents and approvals required to

carry on its business as now conducted by such Seller. Except as would not be material to the conduct of the business of such Seller and its ownership or use of property, (i) Schedule 3.01 lists each of the states where such Seller is qualified as a foreign entity and (ii) the conduct of the business of such Seller and its ownership or use of property do not require such Seller to be qualified or licensed to do business as a foreign entity in any state except those listed in Schedule 3.01.

Section 3.02. Capitalization. The issued and outstanding equity, of all classes, and the respective holdings of each equity holder of such Seller are as set forth in Schedule 3.02. All issued and outstanding equity of such Seller is validly issued, fully paid and nonassessable. There are no issued and outstanding options, warrants, rights, securities, contracts, commitments, understandings or arrangements by which such Seller is bound to issue any additional equity or options to purchase equity.

Section 3.03. Corporate Authorization. Subject to the entry of the Sale Order, the execution, delivery and performance by such Seller of this Agreement and each Transaction Document and the consummation of the transactions contemplated hereby and thereby are within such Seller's corporate or limited liability company, as applicable, powers and have been duly authorized by all necessary corporate or limited liability company, as applicable, action on the part of such Seller. Subject to the entry of the Sale Order, this Agreement constitutes, and the Transaction Documents to which such Seller is a party, when executed and delivered by such Seller will constitute, the valid and binding obligations of such Seller enforceable against such Seller in accordance with their terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application affecting enforcement of creditors' rights and general principles of equity that restrict the availability of equitable remedies.

Section 3.04. Governmental Authorization. The execution, delivery and performance by such Seller of this Agreement and the Transaction Documents and the consummation of the transactions contemplated hereby and thereby require no filing, application or registration with, or consent, authorization or approval of or other action by or in respect of, any Governmental Authority other than (i) the Sale Order; (ii) the transfer or reissuance of the Permits, Mineral Tenures and the Licenses as contemplated by Section 7.03 and (iii) any such filing, application, registration, consent, authorization, approval or other action as to which the failure to make or obtain would not have a Material Adverse Effect.

Section 3.05. Noncontravention. Except as set forth on Schedule 3.05, after giving effect to the Sale Order, the execution, delivery and performance by such Seller of this Agreement and the Transaction Documents and the consummation of the transactions contemplated hereby and thereby do not and will not (i) conflict with or violate any terms, conditions or provisions in the certificate of incorporation, certificate of formation, bylaws or limited liability company operating agreement (or comparable organizational documents), as applicable, of such Seller, (ii) assuming compliance with the matters referred to in Section 3.04, conflict with or violate any term or provision of Applicable Law, (iii) require any consent or other action by any Person under or constitute (with due notice or lapse of time or both) a default (or give rise to any right of termination, right of first refusal or similar right, cancellation or acceleration of any obligation) under any Assumed Contract or Assumed Lease, (iv) result in the

creation or imposition of any Encumbrance, other than a Permitted Encumbrance, upon the Purchased Assets under any agreement to which any Seller or its properties may be bound, or (v) result in a breach of, or cause the termination or revocation of, any Permit or License held by such Seller necessary to the operation of the business conducted by such Seller.

Section 3.06. Owned Real Property. (a) Schedule 3.06(a) sets forth an accurate and complete list of all Owned Real Property. The property maps attached to Schedule 3.06(a) depict in a reasonably accurate manner the location and boundaries of the Owned Real Property. True and complete copies of the following have heretofore been delivered to Buyer: (i) all deeds, tax bills for the last three years, title insurance policies, title insurance commitments, title reports, title opinions, title abstracts, maps and surveys relating to the Purchased Real Property, in each case which such Seller has in its possession, and (ii) all documents evidencing recorded and unrecorded Encumbrances upon the Purchased Real Property which such Seller has in its possession.

(b) Subject to the standard warranty limitations as set forth in a special warranty deed, the Sellers are the sole owners of the Owned Real Property and have good and marketable title to the Owned Real Property, free and clear of all Encumbrances, except Permitted Encumbrances; the Purchased Assets to be conveyed to Buyer hereunder includes, without limitation, all assets owned or leased by Seller in connection with Seller's operation of the Owned Real Property as of the Effective Date (after taking into account that the Sellers' entire operations have been idled and they have rejected contracts and abandoned assets integral to their operations as of the date of this Agreement); the Purchased Assets conveyed hereunder by Seller is sufficient for the continued conduct of the business at the Owned Real Property after the Closing in substantially the same manner as conducted prior to the Closing and constitutes all of the rights, property and assets necessary to conduct the business as currently conducted at the Owned Real Property (after taking into account that the Sellers' entire operations have been idled and they have rejected contracts and abandoned assets integral to their operations as of the date of this Agreement).

(c) The Sellers have obtained all appropriate certificates of occupancy, licenses, easements and rights of way, required to use and operate the Owned Real Property in all material respects in the manner in which the Owned Real Property is currently being used and operated. No Seller has received written notice of any intention on the part of any issuing authority to cancel, suspend or modify any material approvals, licenses or permits relating to the Owned Real Property.

(d) No Seller has received written notice of any proposed condemnation or special assessment, or other action or proceeding which would materially and adversely affect the Owned Real Property, or any Seller's interest therein.

(e) No Seller is party to any lease or assignment under which such Seller is a lessor or sublessor with respect to the Owned Real Property, and the Owned Real Property is not made available for use by any third party.

(f) There are no outstanding options or rights of first refusal to purchase any of the Owned Real Property or any interest therein.

Section 3.07. Leases and Leased Real Property. (a) Schedule 3.07(a) contains a true and complete list of all the Leases held by the Sellers and used by any Seller and recording information for the Leases that have been recorded, and the Leases have not been amended or modified, assigned or subleased except as set forth on Schedule 3.07(a). To the Knowledge of the Sellers, the property maps attached to Schedule 3.07(a) include a depiction in a reasonably accurate manner of the location and boundaries of the Leased Real Property. A true and complete copy of each Lease, including all material amendments and exhibits, has heretofore been furnished to Buyer. Each of the Leases is in full force and effect and constitutes a valid and binding obligation of each applicable Seller and, to such Seller's Knowledge, the other parties thereto. The leasehold estate created by each Lease is free and clear of all Encumbrances created by, through or under the applicable Seller other than Permitted Encumbrances. Except as disclosed on Schedule 3.07(a), there are no material defaults, breaches or uncured violations by any Seller under any of the Leases, and to the Knowledge of the Sellers no event has occurred that (whether with or without notice, lapse of time or the happening or occurrence of any other event) would constitute a material default, breach or uncured violation by any Seller under any Lease, except for any such defaults or breaches that would be cured through payment of the Cure Costs or arising solely as a consequence of the filing of The Bankruptcy Cases. To the Knowledge of the Sellers, except as disclosed on Schedule 3.07(a), there are no material defaults, breaches or uncured violations by any other party, or to the Knowledge of the Sellers any events, which with notice, the passage of time or both, would constitute such material defaults, breaches or violations by any other party under any of the Leases, except for any such defaults or breaches that would be cured through payment of the Cure Costs or arising solely as a consequence of the filing of the Bankruptcy Cases. To the Knowledge of the Sellers, there are no existing disputes between any Seller and any other party to any of the Leases or, to the Knowledge of the Sellers, any party having rights under or with respect to the Leases that are expected to result in a claim of material default or breach or termination thereof, except for any such defaults or breaches that would be cured through payment of the Cure Costs or arising solely as a consequence of the filing of the Bankruptcy Cases. Sellers have no knowledge that any lessors under any of the Leases intend to exercise any rights or options under the Leases under which lessor may terminate or cancel any Lease prior to the expiration of defined term of the Lease. Each applicable Seller has paid all rent and other payments due and payable under each Lease, and has otherwise complied in all material respects with the Leases, and such Seller has not subleased, assigned or otherwise granted to any Person the right to use or occupy such Leased Real Property or any portion thereof, except for any such non-payments that would be cured through payment of the Cure Costs or arising solely as a consequence of the filing of The Bankruptcy Cases. Seller has not received any notice in writing, and has no Knowledge, that any lessor or landlord will cancel, terminate, or fail to perform its obligations under the Leases.

(b) There are no outstanding options or rights of first refusal to purchase or sublease any of the Sellers' interest in the Leases or any interest therein.

Section 3.08. Permits and Licenses. (a) Set forth on Schedule 3.08 is a complete list of: (i) all permits held by the Sellers in the operation of the Purchased Assets, together with a description of the permitted property or facility, together with a true and complete list of all pending applications for additional permits, renewals of existing permits, or amendments to existing material permits, which have been submitted to any Governmental Authority or other entity by any Seller or any of its Subsidiaries applicable to the operation of the Purchased Assets

(all such permits being herein referred to as the "**Permits**"), (ii) all of the licenses, franchises, certificates, consents, authorizations, approvals, orders, and concessions held by the Sellers or any of their Subsidiaries and used in connection with the operation of the Purchased Assets, together with a true and complete list of all pending applications for additional licenses, renewals of existing licenses, or amendments to existing licenses, which have been submitted to any Governmental Authority or other entity by any Seller or any of their Subsidiaries applicable to the operation of the Purchased Assets (herein referred to as the "**Licenses**"), and (iii) all of the Mineral Tenures, as to each, as amended, supplemented and modified through the Effective Date.

(b) The Permits, Mineral Tenures and Licenses constitute all of the governmental approvals, clearances and authorizations necessary for the current or full operation of and the current conduct of the business of the Sellers, and all of the Permits, Mineral Tenures and the Licenses are final, unappealed, valid, in good standing and in full force and effect. The Sellers and their Subsidiaries are in compliance with the Permits, Mineral Tenures and Licenses. No suspension, revocation or cancellation of any of the Permits, Mineral Tenures or Licenses is threatened or to the Knowledge of the Sellers contemplated, except with respect to regular periodic expirations and renewals thereof, which renewals no Seller or any Subsidiary of such Seller has reason to believe will not be granted. No Seller or any Subsidiary of such Seller has had any Permits, Mineral Tenures or Licenses, or any applications therefor, appealed, denied, revoked, restricted or suspended and no Seller or any Subsidiary of such Seller is currently a party to any proceedings involving the possible appeal, denial, revocation, restriction or suspension of any Permits, Mineral Tenures or Licenses or any of the privileges granted thereunder.

Section 3.09. Environmental.

(a) Except as set forth on Schedule 3.09(a) and as would not have, individually or in the aggregate, a Material Adverse Effect: (i) no written notice, order, request for information, complaint or penalty has been received in the past two years by any Seller with respect to the compliance of the Sellers or the Purchased Assets with any Environmental Laws or liability under any Environmental Laws, and there are no Actions pending or threatened in writing, in each case, that allege a violation by or liability of, whether assumed contractually or by operation of Law, the Sellers of or under any Environmental Law; and (ii) the Sellers are and, for the prior two years, have been in compliance with all applicable Environmental Laws.

(b) Except as set forth on Schedule 3.09(b), No Seller, or, to the Knowledge of the Sellers, no other Person has released, stored, deposited, discharged, buried, dumped or disposed of Hazardous Materials in quantities and concentrations requiring immediate notification of governmental entities pursuant to Environmental Law on or beneath the Purchased Assets, or from the Purchased Assets into the environment, except for such quantities of Hazardous Materials released, stored, deposited, discharged, buried, dumped or disposed of in the ordinary course of business, in material compliance with Environmental Laws and so as would not reasonably be expected to require any material remediation or investigation pursuant to Environmental Law.

(c) Except as set forth on Schedule 3.09(c),Without in any way limiting the generality of the foregoing, to the Knowledge of such Seller, there are no underground injection wells, radioactive materials or septic tanks or waste disposal pits in which any Hazardous Materials have been discharged or disposed, other than as have been used in the ordinary course of business, in compliance in all material respects with all Environmental Laws, and as would not reasonably be expected to require any material remediation or investigation pursuant to Environmental Law.

Section 3.10. Title to the Purchased Assets. Subject to the entry of the Sale Order, upon consummation of the transactions contemplated hereby, including the transfer or reissuance of the Permits, Mineral Tenures and Licenses as contemplated by Section 7.03, Buyer will have acquired good and marketable title in and to, or a valid leasehold interest in, each of the Purchased Assets, free and clear of all Encumbrances, except for Permitted Encumbrances. To the Knowledge of the Sellers, there are no unrecorded Encumbrances relating to the Purchased Real Property other than Permitted Encumbrances.

Section 3.11. Contracts.

(a) Except as set forth on Schedule 3.11(a), other than the Assumed Contracts, no Seller is a party to or bound by any Contracts, except for Contracts that are not material to the business of the Sellers.

(b) Except as set forth on Schedule 3.11(b), Sellers have delivered to Buyer true and complete copies of each Assumed Contract that is material to the business of the Sellers (or written descriptions thereof with respect to oral Assumed Contracts), as amended (each, a "**Material Contract**"). Each Material Contract to which a Seller is a party constitutes a valid and binding agreement of such Seller and to, to the Knowledge of the Sellers, the other party thereto and is in full force and effect. There are no defaults, breaches or uncured violations that will lead to a termination of any Material Contract, except for any such defaults or breaches that would be cured through payment of the Cure Costs or arising solely as a consequence of the filing of the Bankruptcy Cases. To the Knowledge of the Sellers, there are no events, which with notice, the passage of time or both, would constitute such defaults, breaches or uncured violations that would lead to termination under any Material Contract, except for any such defaults or breaches that would be cured through payment of the Cure Costs or arising solely as a consequence of the filing of the Bankruptcy Cases. No Seller has received any written notice that any of the other parties to the Material Contracts will cancel, terminate or fail to perform such party's obligations under any of the Material Contracts, except where such cancellation, termination or failure to perform would not reasonably be expected to be material to the business of the Sellers.

Section 3.12. Insurance. Schedule 3.12 sets forth a list of all insurance policies maintained by or for the benefit of the Sellers (collectively, the "**Insurance Policies**"). All premiums due on such Insurance Policies have either been paid or, if not yet due, accrued. All such Insurance Policies are in full force and effect and enforceable in accordance with their terms. No Seller is in default under, and has not otherwise failed to comply with, any material provision contained in any such Insurance Policy.

Section 3.13. Litigation, Investigations and Claims. (a) Schedule 3.13(a) sets forth a true, complete and correct list of all existing and pending litigation, arbitration, judgment, court order, decree, injunction, administrative order, claim, dispute, process or other Actions against or by any Seller (or any of its Subsidiaries) (collectively "**Litigation**").

(b) Except as set forth on Schedule 3.13(b), to the Knowledge of the Sellers, there is no formal investigation, cessation order or notice of violation or other Actions or otherwise against the Purchased Assets or the operation of the business of the Sellers.

(c) Except as set forth on Schedule 3.13(c), No Seller (or Subsidiary of such Seller) is in default in respect of any order, writ, injunction, decree or process of any arbitrator or Governmental Authority, which default would prevent or hinder the consummation of the transactions contemplated by this Agreement or the Transaction Documents.

Section 3.14. Laws and Regulations. The Sellers and their Subsidiaries are in compliance with all Applicable Laws, Permits, Mineral Tenures and Licenses, as currently interpreted, applied, or enforced, except as explicitly disclosed on Schedule 3.14. Except as set forth on Schedule 3.14, since January 1, 2014, no Seller (or any Subsidiary of such Seller) has received (a) any written notification from any Governmental Authority (i) asserting that a Seller (or a Subsidiary of such Seller) is in violation of any Applicable Laws which such Governmental Authority enforces or (ii) threatening to revoke any Permits, Mineral Tenures or Licenses or (b) any written notice from any Governmental Authority indicating any Permits, Mineral Tenures or Licenses being sought, amended or renewed will be denied by the applicable Governmental Authority.

Section 3.15. Tax Matters. (a) Except as set forth on Schedule 3.15(a), the Sellers have filed or caused to be filed all Tax Returns required to have been filed by the Sellers for the period prior to the Closing except for those Tax Returns for which the filing date has not yet passed. All such Tax Returns are correct and complete and were prepared in substantial compliance with all Applicable Laws. Sellers have paid all Taxes that have become due pursuant to those Tax Returns or pursuant to any assessment or adjustment made with respect thereto. There are no unpaid Taxes due and owing by Sellers or by any other Person (including, without limitation, any corporation with which Sellers file or have filed a consolidated, combined, or unitary return) that are or could reasonably be expected to become an Encumbrance on the Purchased Assets. Sellers have collected or withheld all amounts required to be collected or withheld by Sellers for all Taxes or assessments, and all such amounts have been paid to the appropriate Taxing Authority or set aside in appropriate accounts for future payment when due and all Forms W-2 and 1099 required with respect thereto have been properly completed and timely filed. No claim has been made by any Taxing Authority in a jurisdiction where the Sellers do not file Tax Returns that the Sellers are or may be subject to taxation by that jurisdiction. The Sellers have not waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency, in each case, if it would have an adverse impact on the Purchased Assets or subject Buyer or any of its Affiliates to any Tax Liability after the Closing.

(b) Except as set forth on Schedule 3.15(b), there is no dispute or claim concerning any Tax liability of the Sellers claimed or raised by any Taxing Authority in writing, and, to the Knowledge of the Sellers, no such dispute or claim is threatened.

(c) Except as set forth on Schedule 3.15(c), each Seller is a United States Person within the meaning of Section 7701 of the Code.

Section 3.16. Intellectual Property. There is no Action pending against the Sellers or their Subsidiaries alleging that the Sellers or their Subsidiaries have infringed, misappropriated or otherwise violated any Intellectual Property Right of any Person. To the Knowledge of the Sellers, the conduct of their business does not infringe, misappropriate, misuse or otherwise violate the Intellectual Property Rights of any Person and no claims, proceedings or legal actions currently outstanding relate to allegations that the conduct of the business of the Sellers, infringes, misappropriates, misuses or otherwise violates any Person's Intellectual Property Rights. To the Knowledge of the Sellers, no Seller has received in the last five (5) years any written notice, or to the Knowledge of the Sellers, become aware that any Person is infringing upon the rights of the Sellers in, or misappropriating the subject matter of, any Intellectual Property Rights included in the Purchased Assets, in any material respect.

Section 3.17. Finders' Fees. Except for PJT Partners LP, whose fees and expenses will be paid by the Sellers, there is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of the Sellers who might be entitled to any fee or commission in connection with the transactions contemplated by this Agreement.

Section 3.18. FCPA Matters. No Seller or, to the Knowledge of the Sellers, any director, officer, agent or employee of the Sellers, is aware of or has taken any action, directly or indirectly, that would result in a violation of the Foreign Corrupt Practices Act of 1977 and the rules and regulations thereunder (the "**FCPA**"). The Sellers have conducted their business in compliance with the FCPA and maintain and procedures which are reasonably expected to ensure compliance therewith.

Section 3.19. Purchased Assets. After taking into account that the Sellers' entire operations have been idled and they have rejected contracts and abandoned assets integral to their operations as of the date of this Agreement, the Purchased Assets constitute all of the assets currently used in or related to the conduct of the business of the Sellers.

Section 3.20. Dealings with Affiliates. Schedule 3.20 sets forth a complete list (including the parties) of all written contracts, arrangements or other agreements to which such Seller is, will be or has been a party at any time from January 1, 2011, to the Closing Date, and to which any other Affiliate of such Seller (other than any wholly-owned Affiliate of such Seller or another Seller) was or is also a party. Copies (or a detailed summary in the case of an oral agreement) of such contracts, arrangements or other agreements have been provided to Buyer prior to the date hereof.

Section 3.21. Customers. Except as disclosed on Schedule 3.21, no customer of such Seller that has made purchases representing, individually or in the aggregate, more than $50,000 in payments or commitments to such Seller within the last twenty-four (24) months has (i) ceased, or indicated any intention (whether verbal or written) to cease, doing business with such Seller, (ii) changed or indicated any intention (whether verbal or written) to change any terms or conditions for future purchase of products or services from the terms or conditions that existed with respect to the purchase of such products or services during the twenty-four (24) month

period ending on the date hereof, or (iii) to the Knowledge of such Seller experienced a change in ownership or control.

Section 3.22. Value. To the best of the Sellers' Knowledge, (a) the book value of the Assumed Liabilities under Section 2.03(c) does not exceed and is less than $3 million and (b) the book value of the Assumed Liabilities under Section 2.03(d) does not exceed and is less than $5 million after the deduction of Cure Costs that will satisfy those Assumed Liabilities in Section 2.03(d). To the best of Sellers' Knowledge, each of the book values stated in the preceding sentence constitute a fair market value.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF BUYER

Except as set forth in the Disclosure Schedule, Initial Buyer represents and warrants to the Sellers and ERP Iron Ore, as of the date of this Agreement and as of the date of the ERP Assumption, and ERP Iron Ore represents and warrants to Initial Buyer and to Sellers as of the date of this Agreement and as of the Closing Date, that:

Section 4.01. Existence and Power. Such Party is a limited liability company duly formed, validly existing and in good standing under the laws of its jurisdiction of formation and has all limited liability company powers and all material governmental licenses, authorizations, qualifications permits, consents and approvals required to carry on its business as now conducted.

Section 4.02. Authorization. The execution, delivery and performance by such Party of this Agreement and the Transaction Documents and the consummation of the transactions contemplated hereby and thereby are within the limited liability company powers of such Party and have been duly authorized by all necessary limited liability company action on the part of such Party. Subject to the entry of the Sale Order, this Agreement constitutes, and the Transaction Documents to which such Party is a party, when executed and delivered by such Party will constitute, the valid and binding obligations of such Party enforceable against such Party in accordance with their terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application affecting enforcement of creditors' rights and general principles of equity that restrict the availability of equitable remedies.

Section 4.03. Governmental Authorization. The execution, delivery and performance by such Party of this Agreement and each of the Transaction Documents and the consummation of the transactions contemplated hereby and thereby require no material filing, application or registration with, or consent, authorization or approval of or other action by or in respect of any Governmental Authority other than (i) the Sale Order and (ii) the transfer or reissuance of the Permits as contemplated by Section 7.03.

Section 4.04. Noncontravention. Except as set forth on Schedule 4.04, the execution, delivery and performance by such Party of this Agreement and the Transaction Documents and the consummation of the transactions contemplated hereby and thereby do not and will not (i) conflict with or violate any terms, conditions or provisions in the certificate of formation or

limited liability company operating agreement (or comparable organization documents) of such Party, (ii) assuming compliance with the matters referred to in Section 4.03, conflict with or violate any term or provision of Applicable Law or (iii) constitute (with due notice or lapse of time or both) a default (or give rise to any right of termination, right of first refusal or similar right, cancellation or acceleration of any right or obligation) under any Contract binding upon such Party, except, in the case of this clause (iii), as would not reasonably be expected to materially delay the ability of such Party to consummate the transactions contemplated in this Agreement and, in each case, after giving effect to the Sale Order.

Section 4.05. Intentionally Omitted.

Section 4.06. Intentionally Omitted.

Section 4.07. Litigation. There is no action, suit, investigation or proceeding pending against, or to the Knowledge of ERP Iron Ore, threatened against or affecting, ERP Iron Ore before any arbitrator or any Governmental Authority which in any manner challenges or seeks to prevent, enjoin, alter or materially delay the transactions contemplated by this Agreement.

Section 4.08. Finders' Fees. There is no investment banker, broker, finder or other intermediary who has been retained by or is authorized to act on behalf of such Party who might be entitled to any fee or commission in connection with the transactions contemplated by this Agreement.

Section 4.09. Inspections; No Other Representations. Such Party is an informed and sophisticated purchaser, and has engaged expert advisors, experienced in the evaluation and purchase of property and assets such as the Purchased Assets as contemplated hereunder. Such Party has undertaken such investigation and has been provided with and has evaluated such documents and information as it has deemed necessary to enable it to make an informed and intelligent decision with respect to the execution, delivery and performance of this Agreement. Such Party will undertake prior to Closing such further investigation and request such additional documents and information as it deems necessary. Such Party acknowledges and agrees that the Purchased Assets are sold "as is" and such Party agrees to accept the Purchased Assets in the condition they are in on the Closing Date based on its own inspection, examination and determination with respect to all matters, and without reliance upon any express or implied representations or warranties of any nature made by or on behalf of or imputed to the Sellers, except as expressly set forth in this Agreement. Without limiting the generality of the foregoing, such Party acknowledges that the Sellers make no representation or warranty with respect to (i) any projections, estimates or budgets delivered to or made available to such Party of future revenues, future results of operations (or any component thereof), future cash flows or future financial condition (or any component thereof) of the business of the Sellers or the future business and operations of the Purchased Assets or (ii) any other information or documents made available to such Party or its counsel, accountants or advisors with respect to the Purchased or Assumed Liabilities, except as expressly set forth in this Agreement.

ARTICLE 5
COVENANTS OF THE SELLERS

Section 5.01. Conduct of the Business. Except as expressly permitted by this Agreement or as consented to by Buyer and ERP Iron Ore in writing (which consent shall not be unreasonably withheld, conditioned or delayed) and to the extent not inconsistent with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, any orders entered by the Bankruptcy Court in the Bankruptcy Case (*provided*, that the Sellers shall (x) not, without the prior written consent of Buyer and ERP Iron Ore, seek any order of the Bankruptcy Court requiring them to refrain from taking any action described in this Section 5.01 and (y) use their commercially reasonable efforts to oppose any motion or other request seeking such an order of the Bankruptcy Court) or other Applicable Law, from the date hereof through the Closing, the Sellers shall, and shall cause their Subsidiaries to, use their commercially reasonable efforts to (a) conduct their business in the ordinary course consistent with past practice and (b) taking into account business exigencies arising as a result of the Sellers' financial condition and status as a chapter 11 debtor:

(i) maintain the Purchased Assets in as good working order and condition as at present, ordinary wear and tear excepted;

(ii) not introduce any material new method of management, operation or accounting; and

(iii) keep in full force and effect the Insurance Policies or other substantially equivalent insurance coverage without being in default or failing to give any notice or present any claim thereunder.

For the avoidance of doubt, the pendency of the Bankruptcy Cases and the effects thereof, and the transactions contemplated by the Settlement Agreement, shall in no way be deemed a breach of this Section 5.01, and the Parties acknowledge that the Sellers' entire operations have been idled, and they have rejected contracts integral to their operations and currently do not have any current prospects for customers.

Section 5.02. No Changes in Business. Without limiting the generality of Section 5.01, but with the acknowledgement that the Sellers' entire operations have been idled, and they have rejected contracts and abandoned assets integral to their operations and currently do not have any current prospects for customers, from the date of this Agreement through the Closing, except as set forth on Schedule 5.02, as expressly permitted by this Agreement or as consented to by Buyer and ERP Iron Ore in writing (which consent shall not be unreasonably withheld, conditioned or delayed) and to the extent not inconsistent with the Settlement Agreement, the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, any orders entered by the Bankruptcy Court in the Bankruptcy Case (*provided* the Sellers shall (x) not, without the prior written consent of Buyer and ERP Iron Ore, seek any order of the Bankruptcy Court compelling them to take any action described in this Section 5.02 and (y) use their commercially reasonable efforts to oppose any motion or other request seeking such an order of the Bankruptcy Court) or other Applicable Law, the Sellers shall not:

(a) reject pursuant to section 365 of the Bankruptcy Code any Contract or Lease (and, where notice of or a request for rejection of a Contract or Lease was filed with the Bankruptcy Court prior to the Effective Date, the Sellers shall either withdraw such notice or request or

adjourn the effectiveness of (including any hearing or decision by the Bankruptcy Court) any such notice or request, in each case, solely to the extent such Contract or Lease is and remains designated an Assumed Contract or Assumed Lease);

(b) enter into or amend any Lease, Contract or commitment or incur or agree to incur any Liability or make any capital expenditures except for non-material Contracts in the ordinary course of business;

(c) grant a participation or security interest in, mortgage, pledge or otherwise encumber or subject to an Encumbrance (other than a Permitted Encumbrance) any Purchased Asset;

(d) acquire (by merger, consolidation or acquisition of stock or assets, inbound license or otherwise) any interest in any corporation, partnership or other business organization or division thereof or other material assets or properties;

(e) incur any Indebtedness or assume, guarantee or endorse the obligations of any Person, in each case other than Indebtedness or assumptions, guarantees or endorsements of obligations of any Person that do not constitute Assumed Liabilities;

(f) waive, release, assign, settle or compromise any material rights or claims that constitute Purchased Assets, or any material litigation or arbitration that constitute Purchased Assets;

(g) enter into any Assumed Contract, understanding or commitment that materially restrains, restricts, limits or impedes the ability of the Sellers to engage in any business in any geographic area or channel of distribution;

(h) sell, lease, license (as licensor), assign, dispose of, allow to lapse, or transfer any material tangible or intangible property or contract right that is a Purchased Asset, other than the sale of Inventory (as such term is defined in the Settlement Agreement) pursuant to the Settlement Agreement, the rejection of Contracts or Leases where notice of such rejection was filed with the Bankruptcy Court prior to the Effective Date (and, where notice of or a request for rejection of a Contract or Lease was filed with the Bankruptcy Court prior to the Effective Date, the Sellers shall either withdraw such notice or request or adjourn the effectiveness of (including any hearing or decision by the Bankruptcy Court) any such notice or request, in each case, solely to the extent such Contract or Lease is and remains designated an Assumed Contract or Assumed Lease) and the abandonment of assets where notice of such abandonment was filed with the Bankruptcy Court prior to the Effective Date;

(i) sell, assign, license, convey, lease (including lease or sublease) or otherwise transfer or dispose of any of the Purchased Assets other than the sale of Inventory (as such term is defined in the Settlement Agreement) pursuant to the Settlement Agreement and the rejection of Contracts or Leases where notice of such rejection was filed with the Bankruptcy Court prior to the Effective Date (and, where notice of or a request for rejection of a Contract or Lease was filed with the Bankruptcy Court prior to the Effective Date, the Sellers shall either withdraw such notice or request or adjourn the effectiveness of (including any hearing or decision by the

Bankruptcy Court) any such notice or request, in each case, solely to the extent such Contract or Lease is and remains designated an Assumed Contract or Assumed Lease);

(j) make loans or advances to, guarantees for the benefit of, or any investments in, any Person;

(k) make, change or revoke any Tax election, settle or compromise any Liability, claim, action, suit, litigation, proceeding, arbitration, investigation, audit or controversy for Taxes, file any amended Tax Return, or enter into any agreement with respect to Taxes, in each case to the extent such action would adversely affect the Purchased Assets, or subject Initial Buyer, ERP Iron Ore or any of their Affiliates to any Tax liability, after the Closing Date;

(l) enter into or amend any Contract or commitment (including any further amendment of the Management Services Agreement or the Technology License Agreement, or any amendment of the ERP Assumption), or enter into any other transaction, directly or indirectly, that constitutes an Assumed Contract or gives rise to an Assumed Liability;

(m) enter into, modify or terminate any labor agreement or collective bargaining agreement or, through negotiation or otherwise, make any commitment or incur any liability to any union or other labor organization;

(n) amend the certificate of incorporation or by-laws of the Sellers;

(o) fail to maintain viability and ownership of all Intellectual Property Rights; or

(p) agree or commit to do any of the foregoing.

Section 5.03. Access to Information. From the date hereof until the Closing Date, the Sellers will (i) give Buyer, its counsel, financial advisors, auditors and other authorized Representatives reasonable access to the Purchased Real Property and other facilities and properties of the Sellers and the books and records of the Sellers, (ii) furnish to Buyer, its counsel, financial advisors, auditors and other authorized Representatives such financial and operating data and other information relating to the Purchased Assets and Assumed Liabilities as such Persons may reasonably request and (iii) instruct the employees, counsel and financial advisors of the Sellers to cooperate with Buyer in its investigation of the Purchased Assets and Assumed Liabilities. Any investigation by Buyer or its authorized Representatives pursuant to this Section 5.03 shall be conducted in such manner as not to interfere unreasonably with the conduct of the business of the Sellers. Notwithstanding the foregoing, Buyer shall not (A) have access to personnel records of the Sellers relating to individual performance or evaluation records, medical histories or other information which in the Sellers' good faith opinion is sensitive or the disclosure of which could subject the Sellers to risk of liability or (B) without the prior written consent of the Company (not to be unreasonably withheld, conditioned or delayed), conduct or cause to be conducted any sampling, testing or otherwise invasive investigation of the air, soil, surface water, groundwater, building materials or other environmental media related to the Purchased Assets. Notwithstanding the foregoing, until the Sale Order shall have been entered, except with the prior written consent of the Sellers, Buyer shall not, and shall cause its Affiliates and its respective representatives (including counsel, accountants and financial

advisors) not to, initiate or maintain contact with any security-holder, director, officer, employee, partner, manager, member, agent, advisor, representative, customer, supplier, vendor, independent contractor, lender or landlord of the Sellers, in each case, with respect to, or relating or referring in any way to the business of the Sellers. ERP Iron Ore and its advisers shall be given the same access as Buyer hereunder.

Section 5.04. Release; Acknowledgements. (a) Notwithstanding anything to the contrary contained herein, effective as of the Closing, (i) each Seller (individually and on behalf of its Affiliates) hereby releases and forever discharges Initial Buyer, ERP Iron Ore and each of their respective Affiliates and respective successors and assigns and all officers, directors, partners, members, shareholders, employees and agents of each of them from any and all actual or potential claims, causes of action, proceedings, Liabilities, damages, expenses and/or Losses of whatever kind or nature (including attorneys' fees and costs), in law or equity, known or unknown, suspected or unsuspected, now existing or hereafter arising, whether contractual, in tort or otherwise, which such Person had, has, or may have in the future to the extent relating to the Excluded Assets or the Excluded Liabilities and (ii) Initial Buyer and ERP Iron Ore (individually and on behalf of their Affiliates) hereby release and forever discharge each Seller and each of their respective Affiliates and their respective successors and assigns and all officers, directors, employees and agents of each of them from any and all actual or potential claims, causes of action, proceedings, Liabilities, damages, expenses and/or Losses of whatever kind or nature (including attorneys' fees and costs), in law or equity, known or unknown, suspected or unsuspected, now existing or hereafter arising, whether contractual, in tort or otherwise, which such Person had, has, or may have in the future to the extent relating to the Purchased Assets or the Assumed Liabilities; *provided* that (x) nothing in this Section 5.04 shall constitute a release of any Person arising from conduct of such Person that is determined by a final order of a court of competent jurisdiction to have constituted an actual fraud, willful breach, knowing and intentional misrepresentation or criminal act by such Person and (y) nothing in this Agreement shall be construed to release any Person from any of its contractual obligations under the Settlement Agreement, this Agreement and the Transaction Documents, including its obligations in respect of the Purchased Assets, Assumed Liabilities, Excluded Assets and Excluded Liabilities, as the case may be, each of which shall remain fully effective and enforceable from and after the Closing Date.

(b) Subject to the last sentence of this Section 5.04(b), notwithstanding anything that may be expressed or implied in this Agreement, any of the Transaction Documents or any other document or instrument delivered in connection herewith or therewith, and notwithstanding the fact that the Parties may be partnerships, limited liability companies, corporations or other entities, each Party hereto hereby covenants, agrees and acknowledges that no Person other than the Parties hereto and the parties to the Transaction Documents shall have any liability, obligation or commitment of any nature, known or unknown, whether due or to become due, absolute, contingent or otherwise, under this Agreement, any of the Transaction Documents or any other document or instrument delivered in connection herewith or therewith and that no recourse, remedy or right of recovery of contribution shall be had under this Agreement, any of the Transaction Documents or any other document or instrument delivered in connection herewith or therewith, or for any claim based on, in respect of, or by reason of, such obligations or their creation, the transactions contemplated hereby or thereby or in respect of any oral representations made or alleged to be made in connection herewith or therewith, against, and no

personal liability shall attach to any of Initial Buyer's or its Affiliates' former, current or future direct or indirect equity holders, controlling Persons, stockholders, directors, officers, employees, agents, Affiliates, members, financing sources, managers, general or limited partners or assignees (each a "**Non-Recourse Party**" and collectively, the "**Non-Recourse Parties**"), in each case other than the Parties or any of their respective permitted assignees under this Agreement and, with respect to the Transaction Documents, other than the parties thereto or their respective permitted assigns thereunder. Recourse against the Parties pursuant to the terms of Sections 11.02 and/or 12.14 of this Agreement shall be the exclusive remedies of any Party and all of their respective Affiliates against the Non-Recourse Parties in respect of any liabilities or obligations arising under, or in connection with, this Agreement, any of the Transaction Documents or any other document or instrument delivered in connection herewith; *provided*, however nothing in this Section 5.04(b) shall relieve or otherwise limit the liability of any Party, as such, for any breach or violation of its obligations under such agreements, documents or instruments.

Section 5.05. Bankruptcy Process. (a) The Sellers covenant and agree that if the Sale Order is entered, the terms of any plan submitted by the Sellers to the Bankruptcy Court for confirmation shall not conflict with, supersede, abrogate, nullify, modify, or restrict the terms of this Agreement and the rights of Initial Buyer or ERP Iron Ore hereunder, or in any way prevent or interfere with the consummation or performance of the transactions contemplated by this Agreement, including any transaction that is contemplated by or approved pursuant to the Sale Order. Any confirmation order in the Bankruptcy Cases shall so provide.

(b) Sellers shall file with the Bankruptcy Court the Sale Motion as soon as practicable and shall prosecute the Sale Motion until the earlier of the approval of the Sale Order and termination of this Agreement. Sellers shall deliver to Initial Buyer and ERP Iron Ore prior to filing, and as early in advance as is practicable to permit adequate and reasonable time for Initial Buyer, ERP Iron Ore and their counsel to review and comment, a draft of such Sale Motion, and such Sale Motion when filed by Sellers with the Bankruptcy Court shall be reasonably acceptable to Initial Buyer and ERP Iron Ore.

(c) If the Sale Order or any other orders of the Bankruptcy Court relating to this Agreement shall be appealed or petition for certiorari or motion for rehearing or reargument shall be filed with respect thereto, the Sellers agree to take all action as may be commercially reasonable and appropriate to defend against such appeal, petition or motion and the other Parties agree to cooperate in such efforts, and each Party agrees to use its reasonable efforts to obtain an expedited resolution of such appeal ; *provided* that the absence of an appeal of the Sale Order shall not be a condition to any Party's obligation to consummate the transactions contemplated hereby at the Closing.

Section 5.06. Additional Bankruptcy Matters. (a) From and after the date of this Agreement and until the Closing Date, to the extent reasonably practicable, the Sellers shall deliver to Initial Buyer and ERP Iron Ore drafts of any and all pleadings, motions, notices, statements, applications, schedules, reports, and other papers to be filed or submitted by the Sellers in connection with or related to this Agreement for Initial Buyer's and ERP Iron Ore's prior review. The Sellers shall make reasonable efforts to consult and cooperate with Initial Buyer and ERP Iron Ore regarding (i) any such pleadings, motions, notices, statements,

applications, schedules, reports, or other papers, (ii) any discovery taken in connection with the seeking entry of the Sale Order (including any depositions) and (iii) any hearing relating to the Sale Order, including the submission of any evidence, including witnesses testimony, in connection with such hearing.

(b) The Sellers acknowledge and agree, and the Sale Order shall provide that, on the Closing Date and concurrently with the Closing, all then existing or thereafter arising Liabilities and Liens of, against or created by the Sellers or their bankruptcy estates, shall be fully released from and with respect to the Purchased Assets, which shall be transferred to Initial Buyer and ERP Iron Ore free and clear of all Liabilities and Encumbrances except for Assumed Liabilities and Permitted Encumbrances.

Section 5.07. Insurance. The Sellers shall use commercially reasonable efforts, after the Closing, to (i) enable Buyer and its Affiliates or successors to file, notice and otherwise continue to pursue (or, at the direction and expense of Buyer, shall, to the extent reasonably practicable, file, notice and continue to pursue) any claims on behalf of the Purchased Assets under any third party insurance policy of any Seller covering any Purchased Assets for events occurring prior to the Closing, and (ii) enable Buyer and its Affiliates or successors to recover proceeds under the terms thereof.

Section 5.08. No Hindrance. The Sellers shall not hinder, delay, impede or impair the Bankruptcy Court's approval, or the consummation, of the transactions contemplated by this Agreement; provided that this Section 5.08 shall not be construed to impair the Sellers' contractual rights under this Agreement and the Transaction Documents, including under Section 11.01(c).

Section 5.09. Casualty Loss. Notwithstanding any provision in this Agreement, if at or prior to the Closing Date, any portion of the Purchased Assets or a Seller's business is (i) condemned or taken by eminent domain or (ii) is damaged or destroyed by fire, flooding, storm or other act of God, any act of terrorism or any other casualty event (each of the foregoing, a "**Casualty Event**"), Seller shall notify Initial Buyer and ERP Iron Ore of such Casualty Event and Seller shall, upon Closing, at ERP Iron Ore's option either (a) pay or cause to be paid, as the case may be, any and all insurance proceeds thereof to ERP Iron Ore or (b) assign ERP Iron Ore the right to payment of such insurance proceeds; *provided*, however, that a condition precedent to a Seller's ability to assign the right to payment of such insurance proceeds in (b) shall be such Seller's prior provision of evidence satisfactory to ERP Iron Ore that Seller has an uncontested right to payment of such insurance proceeds enforceable against the insurer (and in the event the provision of such evidence would delay the Closing beyond the End Date for reasons outside the Seller's control, the End Date shall be automatically extended by thirty (30) days). From the date of this Agreement and through the Closing Date, Seller shall prepay and maintain at its own cost and expense (including all premiums, fees, charges, and deductibles) insurance in an aggregate amount of not less than the value of the Purchased Assets for any Casualty Event that may occur with respect to the Purchased Assets or a Seller's business. Any such insurance policy(ies) shall be maintained with an insurer licensed to issue insurance policies in New York.

For the avoidance of doubt, Buyer shall not be entitled to a credit against, or to otherwise deduct from, the Purchase Price for the amount of any losses caused by a Casualty Event.

However, ERP Iron Ore may, in its sole discretion, elect to terminate this Agreement if the amount of such losses in excess of any recoverable insurance proceeds are greater than $500,000.

ARTICLE 6
COVENANTS OF BUYER

Section 6.01. Access. On and after the Closing Date, to the extent permitted by Applicable Law, Buyer will afford to the Sellers and their agents, at no cost to the Sellers, reasonable access to its properties, books, records, employees and auditors to the extent necessary to permit the Sellers to determine any matter relating to its rights and obligations hereunder or to any period ending on or before the Closing Date (including, without limitation, with respect to Avoidance Actions, 401(k) audits and Tax Returns); *provided* that any such access by the Sellers shall be subject to reasonable notice, and not unreasonably interfere with the conduct of the business of Buyer.

Section 6.02. Bankruptcy Actions. ERP Iron Ore acknowledges that adequate assurance of future performance under the Assumed Contracts and the Assumed Leases must be provided and agrees that it shall cooperate with the Sellers in connection with furnishing information or documents to the Sellers to satisfy the requirements of section 365(f)(2)(B) of the Bankruptcy Code. In furtherance of the foregoing, ERP Iron Ore shall take all actions reasonably required to assist in obtaining a Bankruptcy Court finding that there has been an adequate demonstration of adequate assurance of future performance under the Assumed Contracts and Assumed Leases, such as providing non-confidential financial information and other documents or information for filing with the Bankruptcy Court and making ERP Iron Ore's employees and representatives available to testify before the Bankruptcy Court.

Section 6.03. No Hindrance. Neither Initial Buyer nor ERP Iron Ore shall hinder, delay, impede, or impair the Bankruptcy Court's approval, or the consummation, of the transactions contemplated by this Agreement; provided that this Section 6.03 shall not be construed to impair Initial Buyer's or ERP Iron Ore's contractual rights under this Agreement and the Transaction Documents.

ARTICLE 7
COVENANTS OF BUYER AND THE SELLERS

Section 7.01. Further Assurance. (a) Except as otherwise provided herein and subject to the terms and conditions of this Agreement, the Bankruptcy Code and any orders of the Bankruptcy Court, the Sellers and Buyer shall use commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or desirable under Applicable Law to consummate the transactions contemplated by this Agreement, including (i) preparing and filing as promptly as practicable with any Governmental Authority or other third party all documentation to effect all necessary filings, notices, petitions, statements, registrations, submissions of information, applications and other documents and (ii) obtaining and maintaining all approvals, consents, registrations, permits, authorizations and other confirmations required to be obtained from any Governmental Authority or other third party that are necessary, proper or advisable to consummate the transactions contemplated by this Agreement, in each case, after giving effect to the Sale Order. The Sellers and Buyer agree to

execute and deliver such other documents, certificates, agreements and other writings and to use commercially reasonably efforts to take such other actions as may be necessary or desirable in order to consummate or implement expeditiously the transactions contemplated by this Agreement, to vest in ERP Iron Ore good title to the Purchased Assets and to assure and evidence the assumption by ERP Iron Ore of the Assumed Liabilities. Such efforts shall include, but not be limited to, the Sellers' entry into a contract mining agreement with ERP Iron Ore, approved by the Department of Natural Resources, for use of any Permits, Mineral Tenures and Licenses not transferred to ERP Iron Ore at Closing, which use of Permits, Mineral Tenures and Licenses shall be at ERP Iron Ore's cost. Without limiting the foregoing, ERP Iron Ore shall use commercially reasonable efforts to satisfy the conditions set forth in Section 10.02(t) and (w).

(b) Intentionally Omitted.

(c) Intentionally Omitted.

(d) No Party shall agree (or permit any of their respective Affiliates to agree) to participate in any meeting with any Governmental Authority in respect of any filings, investigation or other inquiry relating to the consummation of the transactions contemplated by this Agreement unless it consults with the other Parties in advance (to the extent reasonably practicable to do so) and, to the extent permitted by such Governmental Authority and any Applicable Law, gives the other Parties and their outside counsel the opportunity to attend and participate at such meeting.

(e) The fees and expenses for any necessary filings or submissions to any Governmental Authority pursuant to this Section 7.01 shall be borne in full by ERP Iron Ore.

(f) Initial Buyer shall take such commercially reasonable actions, and cooperate with ERP Iron Ore, in each case, as necessary to allow ERP Iron Ore to perform its obligations under this Agreement, including the obligations of Buyer that ERP Iron Ore is required to perform prior to the ERP Assumption.

Section 7.02. Certain Filings. The Sellers and Buyer shall cooperate with one another (i) in determining whether any action by or in respect of, or filing with, any Governmental Authority is required, or any actions, consents, approvals or waivers are required to be obtained from parties to any material contracts, in connection with the consummation of the transactions contemplated by this Agreement and (ii) in taking such actions or making any such filings, furnishing information required in connection therewith and seeking timely to obtain any such actions, consents, approvals or waivers.

Section 7.03. Permits. (a) (i) As promptly as commercially reasonably possible after the Closing, Buyer shall properly file all applications required to transfer the Transferred Permits/Licenses from the Sellers to Buyer with the appropriate Governmental Authority and (ii) Buyer shall take, or cause to be taken, all actions and do, or cause to be done, all things necessary or desirable under Applicable Law to transfer the Permits, Mineral Tenures and Licenses from the Sellers to Buyer. The Sellers agree to diligently provide any cooperation reasonably requested by Buyer to bring about the transfer of the Permits, Mineral Tenures and Licenses. From and after the Closing, Buyer shall diligently pursue the transfer of the

Transferred Permits/ Licenses to Buyer, and Buyer shall operate under the Permits, Mineral Tenures and Licenses in accordance with their terms and conditions; *provided*, that in no event shall Buyer be obligated to accept any material amendment to the terms of any Permit, Mineral Tenure or License or any additional conditions with respect to any Permit, Mineral Tenure or License. To the extent allowed by and in accordance with Applicable Laws and the terms and conditions of the Transferred Permits/Licenses, the Sellers grant Buyer the right to operate at the sole cost and expense of Buyer under the Permits, Mineral Tenures and Licenses until such time as they are transferred to Buyer. The Sellers shall have (and Buyer grants), after providing reasonable notice, all rights of entry onto the Purchased Real Property necessary for the Sellers to maintain the Permits, Mineral Tenures and Licenses prior to transfer.

(b) Buyer at all times prior to the transfer of the Transferred Permits/Licenses to Buyer shall: (i) comply with all Applicable Law governing, and all conditions and requirements of, or pertaining to, any such Permits, Mineral Tenures and Licenses; and (ii) be solely responsible for all incidents of violation, non-compliance, and similar occurrences related to the Permits, Mineral Tenures and Licenses that arise from the actions of Buyer while operating under such Permits, Mineral Tenures or Licenses following the Closing. Buyer shall promptly deliver to the Sellers written notice of any such incidents or occurrences, which the Sellers shall have the right, but not the obligation, to cure (including right of entry onto the applicable Purchased Real Property) in the event Buyer does not do so, and only in that event Buyer shall promptly reimburse the Sellers for the reasonable costs of any such cure. The Sellers shall have (and Buyer grants), after providing reasonable notice, all rights of entry onto the Purchased Real Property necessary for the Sellers to maintain the Permits, Mineral Tenures and Licenses prior to transfer.

Section 7.04. Notification of Certain Events. Each Party shall promptly notify the other Parties of any event, condition or circumstance of which such Party becomes aware prior to the Closing Date that would cause, or would reasonably be expected to cause, a violation or breach of this Agreement (or a breach of any representation or warranty contained in this Agreement). During the period prior to the Closing Date, each Party will promptly advise the other Parties in writing of any written notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement and the Transaction Documents. A Party's receipt of information pursuant to this Section 7.04 shall not operate as a waiver or otherwise affect any representation, warranty or agreement given or made by the other Parties in this Agreement and shall not be deemed to amend or supplement the Disclosure Schedules to this Agreement.

Section 7.05. Bankruptcy Court Approval. Each of the Parties acknowledge that this Agreement and the sale of the Purchased Assets are subject to Bankruptcy Court approval. The Parties shall cooperate with each other in seeking entry of the Sale Order and any related relief to consummate the transactions contemplated by this Agreement on an expedited basis. Each of ERP Iron Ore and Initial Buyer agrees that it will, at such Party's own cost, promptly take all actions that are reasonably requested by the Sellers to assist in obtaining the Bankruptcy Court's entry of the Sale Order, including furnishing affidavits, financial information or other documents or information for filing with the Bankruptcy Court and making such Party's employees and representatives available to testify before the Bankruptcy Court. The Sellers shall not be permitted to solicit, initiate, or respond to any communication of any nature whatsoever with any

Person regarding an Alternative Transaction; *provided, however*, that the Sellers may respond to any inquiry from, supply information to or have discussions with any potential counterparty to an Alternative Transaction that first initiates discussions regarding an Alternative Transaction without any direct solicitation or inducement by the Sellers or that the Sellers have had communications with in the 30 days prior to the Effective Date.

Section 7.06. Confidentiality. (a) Initial Buyer and its Affiliates and the ERP Iron Ore and their Affiliates will hold, and will use their commercially reasonable efforts to cause their respective Representatives to hold, all confidential documents and information concerning the business of the Company and its Subsidiaries furnished to Initial Buyer or its Affiliates or ERP Iron Ore or their Affiliates in connection with the transactions contemplated by this Agreement in accordance with Section 10.15 of the DIP Credit Agreement with respect to the Buyer and its Affiliates, and the Confidentiality and Nondisclosure Agreement, dated as of June 6, 2016, among the Company, Magnetation, Inc. and ERP Compliant Fuels, LLC (the "**Confidentiality Agreement**") with respect to the ERP Iron Ore and their Affiliates. Notwithstanding anything to the contrary contained in the DIP Credit Agreement or the Confidentiality Agreement, as applicable, the confidentiality obligations therein shall remain in full force and effect until the Closing, at which time such obligations therein and herein shall terminate. If, for any reason, the transactions contemplated by this Agreement are not consummated, such confidentiality obligations shall nonetheless continue in full force and effect in accordance with its terms.

(b) From and after the Closing, Initial Buyer and ERP Iron Ore, on the one hand, and the Sellers, on the other hand, shall, and shall cause their respective Affiliates and its and their respective Representatives to, maintain in confidence any written, oral or other information relating to their respective businesses following the Closing (including, with respect to the Sellers' confidentiality obligations hereunder following the Closing, information relating to the Purchased Assets and Assumed Liabilities) (provided, however, that ERP Iron Ore's confidentiality obligations hereunder shall be limited to information relating to Initial Buyer, the Excluded Assets, and the Excluded Liabilities) or obtained from another Party or its Affiliates or its or their respective Representatives for a period of one (1) year following the later of (x) the date of receipt of any such information or (y) the Closing Date, except that the foregoing requirements of this Section 7.06(b) shall not apply to the extent that (i) any such information is or becomes generally available to the public other than (A) in the case of Initial Buyer and ERP Iron Ore, as a result of disclosure by the Sellers or any of their Affiliates or any of its or their respective Representatives and (B) in the case of the Sellers, as a result of disclosure by Buyer, ERP Iron Ore or any of their respective Affiliates (including, after the Closing, such information relating to the Purchased Assets and Assumed Liabilities) or any of their respective Representatives, (ii) any such information is required by Applicable Law or a Governmental Authority to be disclosed (including any report, statement, testimony or other submission to such Governmental Authority), (iii) any such information is reasonably necessary to be disclosed in connection with any Action or in any dispute with respect to this Agreement (including in response to any summons, subpoena or other legal process or formal or informal investigative demand issued to the disclosing Party in the course of any litigation, investigation or administrative proceeding), or (iv) any such information was or becomes available to such receiving party on a non-confidential basis and from a source (other than a Party to this Agreement or any Affiliate of such Party or any of its or their respective Representatives) that is not bound by a confidentiality agreement with respect to such information. If Initial Buyer, ERP

Iron Ore or the Sellers or any of their respective Affiliates or Representatives becomes legally compelled by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar judicial or administrative process to disclose any such information of another Party, such Party shall, or shall cause such Affiliate or Representative to, provide such other Party with prompt prior written notice of such requirement (including any report, statement, testimony or other submission to such Governmental Authority) to the extent legally permissible and, to the extent reasonably practicable, cooperate with such other Party, at the sole expense of the Party whose information is the subject of such requirement, to obtain a protective order or similar remedy to cause such information not to be disclosed, including interposing all available objections thereto, such as objections based on settlement privilege; *provided*, that in the event that such protective order or other similar remedy is not obtained, Initial Buyer, ERP Iron Ore or Sellers, as applicable, shall, or shall cause such Affiliate or Representative to, furnish only that portion of such information that has been legally compelled, and shall, or shall cause its Affiliate or Representative to, exercise its commercially reasonable efforts, at the sole expense of such Party whose information is the subject of such requirement, to obtain assurance that confidential treatment will be accorded such disclosed information. Each of Initial Buyer, ERP Iron Ore and Sellers shall instruct its Affiliates and its or their respective Representatives having access to such information of such obligation of confidentiality and shall be responsible for any breach of the terms of this Section 7.06(b) by any of its Affiliates or its or their respective Representatives.

Section 7.07. Certain Payments or Instruments Received from Third Parties. To the extent that, after the Closing Date, (a) Buyer receives any payment or instrument that is for the account of a Seller according to the terms of any Transaction Document and that relates primarily to any Excluded Asset or Excluded Liability, Buyer shall promptly deliver such amount or instrument to the relevant Seller, and (b) any of the Sellers receives any payment that is for the account of Buyer according to the terms of any Transaction Document or to the extent relating to the Purchased Assets or Assumed Liabilities, the Sellers shall promptly deliver such amount or instrument to Buyer. All amounts due and payable under this Section 7.07 shall be due and payable by the Party liable therefor in immediately available funds, by wire transfer to the account designated in writing by the relevant Party. Notwithstanding the foregoing, each Party hereby undertakes to use its commercially reasonable efforts to direct or forward all bills, invoices or like instruments to the appropriate Party, as applicable. Any payments received by a Party that are to be delivered to another Party under this Section 7.07 will be treated as being received as an agent for the Party to whom payment is to be delivered solely for U.S. federal income tax purposes.

ARTICLE 8
TAX MATTERS

Section 8.01. Tax Cooperation; Responsibility for Taxes; FIRPTA. (a) Buyer and the Sellers agree to furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance relating to the Purchased Assets and Assumed Liabilities (including access to books and records) as is reasonably necessary for the filing of all Tax Returns, the making of any election relating to Taxes, the preparation for any audit by any Taxing Authority, and the prosecution or defense of any claim, suit or proceeding relating to any Tax. Buyer shall retain all books and records with respect to Taxes pertaining to the Purchased Assets and the Assumed Liabilities for any Pre-Closing Tax Period for a period of at least six

(6) years following the Closing Date. The Sellers and Buyer shall cooperate with each other in the conduct of any audit or other proceeding relating to Taxes involving the Purchased Assets or the Assumed Liabilities. The Sellers shall use commercially reasonable efforts to provide Buyer with such information that is in any of the Sellers' possession and is reasonably requested by Buyer to identify the jurisdictions in which Tax Returns are required to be filed, or Taxes are required to be paid, and the types of Tax Returns required to be filed, in each case with respect to the Purchased Assets..

(b) Excluding Tax prepaid by the Sellers and Taxes that are Assumed Liabilities pursuant to Section 2.03(d), all real property taxes, personal property taxes and similar *ad valorem* obligations levied with respect to the Purchased Assets for a taxable period that includes (but does not end on) the Closing Date (collectively, the "**Apportioned Obligations**") shall be apportioned between the Sellers and Buyer based on the number of days of such taxable period included in the Pre-Closing Tax Period and the number of days of such taxable period after the Closing Date (such portion of such taxable period, the "**Post-Closing Tax Period**"). The Sellers shall be liable for the proportionate amount of such taxes that is attributable to the Pre-Closing Tax Period, and Buyer shall be liable for the proportionate amount of such taxes that is attributable to the Post-Closing Tax Period.

(c) The Buyer shall bear one hundred percent (100%) of all excise, sales, use, value added, registration stamp, recording, documentary, conveyancing, franchise, property, transfer and similar Taxes, levies, charges and fees not excepted or exempted by the Sale Order, incurred in connection with the transactions contemplated by this Agreement, and expenses associated with the preparation and filing of such Tax Return (collectively, "**Transfer Taxes**"). The Sellers and Buyer shall cooperate in providing each other with any appropriate resale exemption certifications and other similar documentation.

(d) The Buyer shall file any Tax Returns and other documentation that must be filed in connection with such Transfer Taxes or Apportioned Obligations, and shall use its commercially reasonable efforts to provide such Tax Returns to the Sellers at least ten (10) Business Days prior to the date such Tax Returns are due to be filed. If required by Applicable Law, the Parties will, and will cause their respective Affiliates to, join in the execution of any such Tax Returns or other documentation.

(e) Apportioned Obligations or Transfer Taxes shall be timely paid, and all applicable filings, reports and returns shall be filed, as provided by Applicable Law. The paying Party shall be entitled to reimbursement from or shall provide a refund to the non-paying Party in accordance with Sections 8.01(a), or (b), as the case may be. Upon payment of any such Apportioned Obligations or Transfer Taxes, the paying Party shall present a statement to the non-paying Party setting forth the amount of reimbursement to which the paying Party is entitled under Sections 8.01(a), or (b), as the case may be, together with such supporting evidence as is reasonably necessary to calculate the amount to be reimbursed or refunded. The applicable Party shall make the payment in the foregoing sentence promptly but in no event later than ten (10) days after the presentation of such statement. Any payment not made within such time shall bear interest at the federal underpayment rate for each day until paid. Notwithstanding the foregoing, the Party with the primary legal obligation to pay any Apportioned Obligations or Transfer Taxes may, in its sole discretion, seek reimbursement under this Section 8.01 from the

non-paying Party prior to such Party's payment of any such Apportioned Obligations or Transfer Taxes, and the non-paying Party shall make such reimbursement promptly but in no event later than ten (10) days after the presentation of such statement; *provided*, that the non-paying Party shall not be required to make such reimbursement earlier than ten (10) days prior to the date on which such Apportioned Obligations or Transfer Taxes are due.

(f) On or before the Closing Date, each Seller shall deliver to Buyer a certification that it is not a foreign person in accordance with Section 1445 of the Code.

ARTICLE 9
EMPLOYEE MATTERS

Section 9.01. Representations and Warranties. Except as set forth in the Disclosure Schedule, each Seller represents and warrants, on a joint and several basis with the other Sellers, to Buyer and ERP Iron Ore, as of the date of this Agreement and as of the Closing Date, that:

(a) Schedule 9.01(a) contains a complete and accurate list of the following information for each employee of a Seller as of the date hereof, including each employee on active status, on a leave of absence, non-active or layoff status, or off work and receiving or eligible to receive benefits under any federal or state workers' compensation law (the "**Business Employees**"). Schedule 9.01(a) shall include for each Business Employee the name, job title, date of commencement of employment, status, current salary or wage classification, current base compensation or base wage rate, and all group insurance or other benefit programs in effect for such Business Employee. No Business Employee has indicated to the Sellers that he or she intends to resign or retire as a result of the transactions contemplated by this Agreement or is otherwise unwilling to accept an offer of employment from Buyer or its Affiliates. Except as set forth on Schedule 9.01(a), no collective bargaining agreement or other labor union contract is currently in effect with respect to any Business Employee, no such agreement or contract has been requested by any such Business Employee or group of Business Employees nor has there been any discussion with respect thereto by management of a Seller with any Business Employees.

(b) Schedule 9.01(b) contains a complete and accurate list of the following information for each employee of Magnetation, Inc. providing services to the Sellers pursuant to the Management Services Agreement as of the date hereof, including each employee on active status, on a leave of absence, non-active or layoff status, or off work and receiving or eligible to receive benefits under any federal or state workers' compensation law. Schedule 9.01(b) shall include for each such employee the name, job title and status of such employee.

(c) Except as set forth on Schedule 9.01(c), none of the Sellers, any ERISA Affiliate of the Sellers or any predecessor thereof (i) has, or had in the past six calendar years, any potential liability, whether absolute or contingent, under Title IV of ERISA, (ii) contributes to, or has in the past six calendar years contributed to or had any obligation to contribute to, any multiemployer plan, as defined in Section 3(37) of ERISA, or (iii) provides, or has any obligation to contribute to, post-employment or post-retirement health or welfare benefits to any individual other than as required pursuant to Section 4980B of the Code or any similar state

statute, nor has any Seller made any representation, agreement, covenant or commitment to provide any such coverage.

(d) Except at set forth on Schedule 9.01(d), no Seller has Knowledge of any union organizing activities or proceedings involving, or any pending petitions for recognition of, a labor union or association as the exclusive bargaining agent for, or where the purpose is to organize, any group or groups of Business Employees. There is not currently pending, with regard to any of its facilities, any proceeding before the National Labor Relations Board, wherein any labor organization is seeking representation of any Business Employees. No Seller has any Knowledge of any strikes, work stoppages, grievances, work slowdowns or lockouts nor of any threats thereof, by or with respect to any of the Business Employees.

(e) Except as set forth on Schedule 9.01(e), with respect to the Sellers, there exist: (i) no material charges of discrimination or material lawsuits involving alleged violations of any fair employment law, wage payment law, occupational safety and health law; (ii) to the Knowledge of the Sellers, no threatened or pending material litigation arising out of employment relationships, or other employment-related federal, state or local law; and (iii) to the Knowledge of the Sellers, no threatened or pending material litigation arising out of employment relationships, by any applicant, Business Employee or former employee of the Sellers or any representative of any such Person or Persons. No material charges or claims involving any of the facilities of any Seller or any of its Subsidiaries or any Business Employees or former employees of the Sellers are pending before any local, state or federal administrative agency, and no material lawsuits involving any such facilities or employees are pending with respect to equal employment opportunity, age discrimination, occupational safety, or any other form of alleged employment practice or unfair labor practice.

(f) Except as set forth on Schedule 9.01(f), within the twelve months prior to the date hereof, no Seller or any Subsidiary of such Seller has implemented any plant closing or layoff of individuals employed by a Seller in violation of the Worker Adjustment and Retraining Notification Act (or any similar state or local law, the "**WARN Act**"), the regulations promulgated thereunder, or any similar applicable foreign, state or local law. No Seller or any Subsidiary of such Seller has incurred any material liability under the WARN Act that remains unsatisfied as of the Closing Date.

(g) Except as set forth on Schedule 9.01(g), with respect to the Company 401(k) Plans, (i) such plans are qualified under Section 401 of the Code and each trust established in connection with such plans is exempt from federal income taxation under Section 501(a) of the Code, and the plans and each such trust have received a favorable determination letter from the Internal Revenue Service with respect to such qualification or exemption, and nothing has occurred since the date of such letter that has or could reasonably be expected to adversely affect such qualification or exemption, (ii) there are no Actions, liens, suits, claims or complaints pending (other than routine claims for benefits) or, to the knowledge of the Sellers, threatened or anticipated with respect to such plans, any fiduciaries of such plans with respect to their duties to such plans, or against the assets of such plans or any trust maintained in connection with such plans, and no facts or circumstances exist that are reasonably likely to give rise to any such Actions, liens, suits, claim or complaints, and (iii) such plans have been operated and

administered in compliance in all material respects with its terms and Applicable Law, including ERISA and the Code.

Section 9.02. Covenants. (a) ERP Iron Ore, no later than five Business Days prior to the Closing, shall provide the Sellers with a list of Business Employees, if any, to whom it desires to offer employment (whether through ERP Iron Ore or one of its Affiliates) effective post-Closing (the "**Offered Employees**"). As of the Closing Date, the Sellers shall terminate the employment of each Offered Employee and shall cooperate with, and use their commercially reasonable efforts to assist, ERP Iron Ore with ERP Iron Ore's hiring of such Offered Employees. Those Offered Employees who accept ERP Iron Ore's offer of employment and commence working for ERP Iron Ore post-Closing (or upon return to work from approved vacation or leave of absence) shall hereafter be referred to as "**Transferred Employees**."

(b) (i) Buyer will cause any employee benefit plans of Buyer (or any Affiliate thereof sponsoring or maintaining such plans) which the Transferred Employees are entitled to participate in from and after the Closing, if any, (the "**Buyer Plans**") to take into account for purposes of eligibility and vesting thereunder, but not with respect to accrual of benefits other than in the case of vacation, service by the Transferred Employees with the Sellers prior to the Closing as if such service were with Buyer to the same extent such service was credited under a comparable benefit plan of the Sellers prior to the Closing (except to the extent it would result in the duplication of benefits), in each case to the extent permitted under Applicable Law and the terms of the applicable Buyer Plan. In addition, with respect to each Buyer Plan that is a "welfare benefit plan" (as defined in Section 3(1) of ERISA), Buyer shall, or shall cause an Affiliate of Buyer sponsoring or maintaining such Buyer Plan, to (A) cause there to be waived any pre-existing condition exclusions, actively at work requirements, insurability requirements or other eligibility limitations, and (B) give effect, in determining any deductible, co-insurance and maximum out-of-pocket limitations, to claims incurred and amounts paid by, and amounts reimbursed to, the Transferred Employees and their dependents under an Employee Plan during the current plan year of the Buyer Plan as of the Closing, in each case to the extent permitted under Applicable Law and the terms of the applicable Buyer Plan.

(ii) Following the Closing, to the extent permitted by applicable policies of Buyer (including any caps or limits on accrued and unused paid time off thereunder), Buyer will allow Transferred Employees to use all accrued and unused paid time off to which such Transferred Employee is entitled under the applicable policies of the Sellers immediately prior to the Closing Date to the extent accurately reflected on the books and records sold to Buyer. The Sellers shall provide Buyer with a record of such accrued paid time off for each Transferred Employee.

(c) With respect to Transferred Employees, Buyer and the Sellers shall use the alternative procedure set forth in Revenue Procedure 2004-53, 2004-34 I.R.B. 320, for purposes of employment tax reporting.

(d) The Sellers shall be responsible for all Workers' Compensation Liabilities arising out of any act or omission prior to Closing that results in occupational injury or exposure and Buyer shall be responsible for all Workers' Compensation Liabilities arising out of any act or omission after the Closing that results in occupational injury or exposure.

(e) Nothing in this Section 9.02 is intended to require Buyer to offer employment to any Offered Employees, or continue employment for any period of time or on any specific terms or conditions of any Transferred Employee after the Closing. Nothing contained in this Agreement shall be construed as an amendment or modification of any employee benefit plan of the Sellers or Buyer.

Section 9.03. No Third Party Beneficiaries. Without limiting the generality of Section 12.09, the provisions of this Article 9 are included for the sole benefit of the Sellers and Buyer and nothing herein, whether express or implied, shall create any third party beneficiary or other rights in any other Person, including in any current or former employee, independent contractor or other service provider (including any beneficiary or dependent thereof) of the Sellers in respect of continued employment (or resumed employment) with Buyer or any of its Affiliates and no provision of this Article 9 shall create any rights in any such Persons in respect of any benefits that may be provided, directly or indirectly, under any Employee Plan, Buyer Plan or any plan or arrangement that may be established by Buyer or any of its Affiliates. No provision of this Agreement shall constitute a limitation on rights to amend, modify or terminate after the Closing Date any such plans or arrangements of the Sellers, Buyer or any of their respective Affiliates.

ARTICLE 10
CONDITIONS TO CLOSING

Section 10.01. Conditions to Obligations of Buyer and the Sellers. The obligations of Initial Buyer, ERP Iron Ore and the Sellers to consummate the Closing are subject to the satisfaction of the following conditions:

(a) Intentionally Omitted.

(b) The Sale Order (including approval of the assignments of the rights to receive distributions under the Settlement Agreement to ERP Iron Ore at Closing in paragraph BB thereof) and any related relief shall have been entered by the Bankruptcy Court substantially in the form attached hereto as Exhibit F, with such non-material changes as are in form and substance reasonably satisfactory to Initial Buyer, ERP Iron Ore and the Sellers, shall be in full force and effect, shall not be stayed, reversed or vacated, and shall not be otherwise modified or amended without the written consent of Buyer and ERP Iron Ore.

(c) No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any order, writ, judgment, injunction, decree stipulation, determination or award which is in effect and has the effect of making the transactions contemplated by this Agreement illegal, otherwise restraining or prohibiting consummation of the transactions contemplated by this Agreement or causing any of the transactions contemplated by this Agreement to be rescinded following completion thereof.

(d) All consents and approvals of any Governmental Authority necessary to the consummation of the transactions contemplated by this Agreement shall have been obtained and shall be in full force and effect.

Section 10.02. Conditions to Obligation of Buyer. The obligation of Initial Buyer and ERP Iron Ore to consummate the Closing is subject to the satisfaction of the following further conditions (excluding: in the case of Initial Buyer, those conditions set forth in clauses (d), (e), (n), (o), (p), (q), (s) (as to deliverables set forth in Section 2.09 other than those to Initial Buyer under Section 2.09 (i), (m) and (n)), (t), (u) and (w) below; and in the case of ERP Iron Ore, those conditions set forth in clauses (h), (i), (j) and (l)):

(a) Each Seller shall have performed or complied with, in each case, in all material respects, all of its obligations hereunder required to be performed by it on or prior to the Closing Date.

(b) Representations and Warranties.

(i) Each of the representations and warranties of the Sellers contained in this Agreement (without giving effect to any qualification as to materiality, Material Adverse Effect or words of similar import included therein), other than Fundamental Representations of the Sellers, shall be true and correct in all respects on and as of the Effective Date and on and as of the Closing Date, as if made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects), except where the failure to be so true and correct (without giving effect to any qualifications as to materiality, Material Adverse Effect or words of similar import included therein) would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(ii) Each of the Fundamental Representations of the Sellers contained in this Agreement shall be true and correct in all respects on and as of the Effective Date and on and as of the Closing Date, as if made at and as of such date.

(c) Initial Buyer and ERP Iron Ore shall have received a certificate signed by an authorized officer of the Sellers certifying the satisfaction of the conditions set forth in the foregoing clauses (a) and (b).

(d) Since the Effective Date, there shall not have occurred any Material Adverse Effect (or any development that would reasonably be expected to result in a Material Adverse Effect).

(e) The Purchased Assets shall include an amount of unrestricted cash that is equal to at least $1,750,000 (which amount shall not include any cash returned to the Sellers in connection with the reduction or release of any letters of credit or other financial assurances unless consented to in writing by ERP Iron Ore) (the condition set forth in this Section, the "**Minimum Cash Condition**").

(f) ERP Iron Ore shall have authorized, executed and delivered its counterpart to the New Indenture and New Security Agreement and shall have authorized, issued and delivered the ERP Notes at Closing as contemplated by Section 2.11(a).

(g) Wilmington Savings Fund Society, FSB, shall have authorized, executed and delivered its counterparts to the New Indenture, ERP Notes and New Security Agreement as contemplated by Section 2.11(a).

(h) ERP Compliant Coke shall have authorized, executed and delivered its counterpart to the New Indenture guaranteeing the ERP Notes as contemplated by Section 2.11(a).

(i) Tom Clarke and Ana Clarke shall have executed and delivered their counterparts to the Clarke Guaranty as contemplated Section 2.11(a).

(j) The ERP Notes shall be secured at Closing pursuant to the New Security Agreement as contemplated by Section 2.11(a).

(k) The DIP Credit Release shall be effected as provided in Section 2.10.

(l) ERP Iron Ore shall have executed and delivered its counterpart to the ERP Assumption to Initial Buyer as contemplated by Section 2.11.

(m) The Sellers shall have executed and delivered their counterparts to the ERP Assumption to Initial Buyer and ERP Iron Ore as contemplated by Section 2.11.

(n) The objection deadline shall have passed for all counterparties to Assumed Contracts and Assumed Leases designated for assumption and assignment at Closing to object to the Cure Costs contained in their respective Cure Notice.

(o) Assumption and assignment to ERP Iron Ore of all Assumed Contracts and Assumed Leases designated by ERP Iron Ore for assumption and assignment at Closing pursuant to the express terms of the Sale Order.

(p) The Bankruptcy Court shall have approved the assignment of the Restated and Amended Technology License Agreement to ERP Iron Ore, which shall be in full force and effect and shall not have been modified or amended.

(q) The Mag Entities Support Agreement shall be in full force and effect.

(r) Intentionally Omitted.

(s) All documents required to be delivered by the Sellers or the Initial Buyer pursuant to Section 2.09 shall have been delivered.

(t) Any and all Statutory Liens shall have been released from all Purchased Assets as well as assets in which the Sellers have an interest other than ownership (for example, the land leased from Itasca County, Minnesota, in which the Sellers hold a leasehold interest under a Lease or Mineral Tenure) in a manner acceptable to the Buyer (the "**Statutory Lien Condition**"), which, only as to any mechanics lien holder that has executed a memoranda of understanding with ERP Iron Ore, release shall be consistent with such memoranda of understanding as to such mechanics lien holder, as amended by any subsequent request of a Party

or in the Sale Order, and each such lien holder shall have withdrawn its appeal of the order approving the Settlement Agreement.

(u) The Leases listed on Schedule 10.02(u) shall have been amended in form and substance acceptable to ERP Iron Ore, and shall be assigned to ERP Iron Ore as amended at Closing.

(v) The Settlement Agreement shall be in full force and effect.

(w) In the event ERP Iron Ore has not received an equity contribution of $15 million prior to the Closing, ERP Iron Ore shall have entered into agreements with Caterpillar Financial Services Corporation, Progress Rail Leasing and the State of Minnesota that avoid draws on letters of credit, bonds, or similar instruments concerning the Purchased Assets.

The conditions described in Section 10.02 (a), (b), (c), (f), (g), (k), (m), and (s) (as to deliverables in Section 2.09(i), (m) and (n) only) are for the sole benefit of Initial Buyer and ERP Iron Ore and may be waived by Initial Buyer and ERP Iron Ore, in whole or in part, at any time and from time to time in the sole discretion of Initial Buyer and ERP Iron Ore. The conditions described in Section 10.02 (d), (e), (n), (o), (p), (q), (s) (as to deliverables in Section 2.09 other than subsections (i), (m) or (n) of Section 2.09), (t), (u), (v) and (w) are for the sole benefit of ERP Iron Ore and may be waived by ERP Iron Ore, in whole or in part, at any time and from time to time in the sole discretion of ERP Iron Ore; *provided*, *however*, ERP Iron Ore shall use commercially reasonable efforts to satisfy the conditions set forth in Section 10.02(t) and (w). The conditions described in Section 10.02 (h), (i), (j) and (l) are for the sole benefit of Initial Buyer and may be waived by Initial Buyer, in whole or in part, at any time and from time to time in the sole discretion of Initial Buyer. The failure by Initial Buyer and ERP Iron Ore at any time to exercise any of their rights hereunder shall not be deemed a waiver of any such right and each such right shall be deemed an ongoing right which may be asserted at any time and from time to time.

Section 10.03. Conditions to Obligation of the Sellers. The obligation of the Sellers to consummate the Closing is subject to the satisfaction of the following further conditions:

(a) Initial Buyer and ERP Iron Ore shall have performed or complied with, in each case, in all material respects, all of their respective obligations hereunder required to be performed by them on or prior to the Closing Date.

(b) Representations and Warranties.

(i) Each of the representations and warranties of Initial Buyer and ERP Iron Ore contained in this Agreement (without giving effect to any qualification as to materiality, material adverse effect or words of similar import included therein), other than Fundamental Representations of Initial Buyer and ERP Iron Ore, shall be true and correct in all respects on and as of the Effective Date and on and as of the Closing Date, as if made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects), except where the failure to be so true and correct (without

giving effect to any qualifications as to materiality, material adverse effect or words of similar import included therein) would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on Buyer's ability to consummate the transactions contemplated by this Agreement, after giving effect to the Sale Order.

(ii) Each of the Fundamental Representations of Initial Buyer and ERP Iron Ore contained in this Agreement shall be true and correct in all respects on and as of the Effective Date and on and as of the Closing Date, as if made at and as of such date.

(c) The Sellers shall have received a certificate signed by the Chief Executive Officer or Chief Financial Officer of each of Initial Buyer and ERP Iron Ore certifying the satisfaction of the conditions set forth in the foregoing clauses (a) and (b), in each case, as to itself only.

(d) The Deferred Payment Amount (as defined in the Settlement Agreement) shall have been paid in full in cash.

The foregoing conditions of this Section 10.03 are for the sole benefit of the Sellers and may be waived by the Sellers, in whole or in part, at any time and from time to time in the sole discretion of the Sellers. The failure by the Sellers at any time to exercise any of their rights hereunder shall not be deemed a waiver of any such right and each such right shall be deemed an ongoing right which may be asserted at any time and from time to time.

Section 10.04. Frustration of Closing Conditions. No Party may rely on the failure of any condition set forth in this Article 10 to be satisfied to excuse such Party's obligation to effect the Closing if such failure was caused by such Party's breach of this Agreement.

ARTICLE 11
TERMINATION

Section 11.01. Grounds for Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by mutual written agreement of the Sellers and Buyer (and ERP Iron Ore if prior to the ERP Assumption);

(b) by either the Sellers or Buyer (and ERP Iron Ore if prior to the ERP Assumption) if the Closing shall not have been consummated on or before December 30, 2016 (the "**End Date**"); *provided*, however, that either Sellers, ERP Iron Ore or Buyer may extend the End Date by obtaining the prior written consent of the other Parties, which consent shall not be unreasonably delayed or withheld; *provided*, further, that at the time of such termination, the Party seeking to terminate shall not (i) be in material breach of its obligations under this Agreement, including its obligation to consummate the Closing on the terms and subject to the conditions set forth herein, (ii) have failed to use its commercially reasonable efforts to avoid or eliminate each and every impediment to and/or cause for delay of the entry of the Sale Order, and, assuming the Sale Order is entered, Closing so as to enable those events to occur as soon as reasonably practicable; provided that this clause (ii) shall not be construed to impair the Sellers' contractual rights under this Agreement and the Transaction Documents, including under Section 11.01(c), or (iii) have failed to fulfill any of its obligations under this Agreement, which was the

direct or indirect cause of, or otherwise resulted in, the failure of the Closing to occur on or before the End Date;

(c) by either Buyer or the Sellers if the Bankruptcy Court approves an Alternative Transaction, or automatically if an Alternative Transaction is consummated; provided that (i) the Sellers shall only enter into an Alternative Transaction and/or seek Bankruptcy Court approval thereof if the Sellers reasonably determine in good faith, after consultation with their professionals, that the Alternative Transaction is a higher or better offer under Section 363 of the Bankruptcy Code, is in the best interests of the Sellers' bankruptcy estates (giving due consideration to the fact that ERP Iron Ore's purchase is undertaken with the purpose of restarting operations of the Purchased Assets), and that the failure to enter into an Alternative Transaction and/or seek Bankruptcy Court approval thereof is reasonably expected to violate the fiduciary duties of the Sellers' directors and officers (including their Chief Restructuring Officer) under applicable Law, and (ii) the Party seeking such termination shall not have materially breached its obligations pursuant to the last sentence of Section 7.06;

(d) by Buyer and ERP Iron Ore if the Sale Order shall not have been entered on or before December 16, 2016;

(e) by either the Sellers or Buyer (and ERP Iron Ore if prior to the ERP Assumption) if consummation of the transactions contemplated hereby would violate any nonappealable final order decree or judgment of any Governmental Authority having competent jurisdiction;

(f) by the Sellers if (i) a breach of any representation or warranty or failure to perform any covenant or agreement on the part of Buyer set forth in this Agreement shall have occurred that would cause any of the conditions set forth in Section 10.01 and 10.03 not to be satisfied and (ii) such condition is incapable of being cured or, if curable, is not cured by Buyer by the earlier of (A) within ten (10) Business Days after the giving of written notice of such breach or failure and (B) the End Date; provided, that at the time of such termination, the Sellers shall not be in material breach of their obligations under this Agreement;

(g) by Buyer (and ERP Iron Ore if prior to the ERP Assumption) if (i) a breach of any representation or warranty or failure to perform any covenant or agreement on the part of the Sellers set forth in this Agreement shall have occurred that would cause any of the conditions set forth in Section 10.01 and 10.02 not to be satisfied and (ii) such condition is incapable of being cured or, if curable, is not cured by the Sellers by the earlier of (A) within ten (10) Business Days after the giving of written notice of such breach or failure and (B) the End Date; provided, that at the time of such termination, Buyer shall not be in material breach of its obligations under this Agreement;

(h) by ERP Iron Ore pursuant to the terms of Section 5.09; or

(i) by Initial Buyer, if the Closing shall not have occurred on or before January 13, 2017; *provided*, that at the time of such termination, Initial Buyer shall not (i) be in material breach of its obligations under this Agreement, including its obligation to consummate the Closing on the terms and subject to the conditions set forth herein, (ii) have failed to use its commercially reasonable efforts to avoid or eliminate each and every impediment to and/or

cause for delay of the entry of the Sale Order, and, assuming the Sale Order is entered, Closing so as to enable those events to occur as soon as reasonably practicable (provided that such commercially reasonable efforts shall not require the waiver of any rights by Initial Buyer under this Agreement or any action by Initial Buyer, or any consent of Initial Buyer to any action by any other Person, that would adversely affect the terms of the ERP Notes, or otherwise adversely affect the consideration payable in respect of the DIP Credit Release, under this Agreement), or (iii) have failed to fulfill any of its obligations under this Agreement, which was the direct or indirect cause of, or otherwise resulted in, the failure of the Closing to occur on or before the End Date;

Except pursuant to Section 11.01(i), Initial Buyer shall not terminate this Agreement without the prior written consent of ERP Iron Ore; *provided*, however, that such consent shall not be required if ERP Iron Ore shall have failed to perform or comply with, in all material respects, its material obligations hereunder. The Party or Parties, as applicable, desiring to terminate this Agreement pursuant to Section 11.01 (other than Section 11.01(a)) shall give notice of such termination to the other Parties.

Section 11.02. Effect of Termination. If there is a breach or default of any Party's obligations under this Agreement or the Transaction Documents, or if this Agreement is terminated as permitted by Section 11.01 (which shall also terminate any rights and obligations under the ERP Assumption), any such breach, default or termination shall be without liability of any Party or any of its Affiliates (or any director, stockholder, other interest holder, officer, employee, agent, consultant or representative of such Party); provided, that if any such breach, default, or termination shall result from fraud, bad faith, or willful misconduct by a Party, such Party shall be fully liable for any and all Losses incurred or suffered by the other Parties as a result of such fraud (and any such Losses payable by the Sellers shall constitute allowed administrative expense claims in the Bankruptcy Cases). Notwithstanding the foregoing sentence, each Party waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding any special, exemplary, punitive or consequential damages. The provisions of Sections 7.04 and 7.07, this Section 11.02 and Article 12 shall survive any termination hereof pursuant to Section 11.01.

ARTICLE 12
MISCELLANEOUS

Section 12.01. Notices. All notices, requests and other communications to any Party shall be in writing (including electronic mail ("**e-mail**") transmission, but excluding facsimile transmission) and shall be given,

if to Initial Buyer, to the persons at the addresses provided in Schedule 12.01, with a copy to:

Milbank, Tweed, Hadley & McCloy LLP
28 Liberty Street
New York, NY 10005
Attention: Evan Fleck
E-mail: efleck@milbank.com

if to the Sellers, to:

Magnetation LLC
102 NE 3rd Street, Suite 120
Grand Rapids, MN 5574
Attention: Michael J. Talarico
E-mail: michael.talarico@fticonsulting.com

with a copy to:

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
Attention: Marshall S. Huebner
John H. Butler
E-mail: marshall.huebner@davispolk.com
john.butler@davispolk.com

if to ERP Iron Ore, LLC, to:

ERP Iron Ore, LLC
15 Appledore Lane
Natural Bridge, VA 24578
Attention: Tom Clarke
E-mail: tom.clarke@kissito.org

with a copy to:

Dentons US LLP
1221 Avenue of the Americas
New York, NY 10020
Attention: Oscar N. Pinkas
E-mail: oscar.pinkas@dentons.com

and

Dentons US LLP
233 South Wacker Drive, Suite 5900
Chicago, IL 60606-6361
Attention: Robert E. Richards
E-mail: robert.richards@dentons.com

and

Dentons US LLP
4520 Main Street, Suite 1100
Kansas City, MO 64111

Attention: R. Matthew Garms
E-mail: matthew.garms@dentons.com

or such other address as such Party may hereafter specify for the purpose by notice to the other parties hereto. All notices and other communications given in accordance with the provisions of this Agreement shall be deemed to have been given and received when delivered by hand or transmitted by email, three Business Days after the same are sent by certified or registered mail, postage prepaid, return receipt requested or one Business Day after the same are sent by a reliable overnight courier service, with acknowledgement of receipt.

Section 12.02. Survival. The representations, warranties and agreements contained herein and in any certificate or other writing delivered pursuant hereto shall not survive the Closing, except for the express agreements and covenants which by their terms are to be performed by the Parties following the Closing (including, for the avoidance of doubt, the express agreements and covenants in Section 2.07, Section 6.01, Section 7.03, Section 7.05, Section 7.06, Section 7.07, Article 8, and Section 9.02).

Section 12.03. Amendments and Waivers. (a) Any provision of this Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by each Party, or in the case of a waiver, by the Party or Parties against whom the waiver is to be effective. Notwithstanding anything in this Agreement to the contrary, this Section 12.03(a), Section 12.06, Section 12.07, Section 12.08, and Section 12.09 (and any provision of this Agreement to the extent an amendment of such provision would modify the substance of such Sections) may not be amended in a manner that adversely affects the rights of the Debt Financing Sources without the prior written consent of the Debt Financing Sources. For the avoidance of doubt, after the ERP Assumption, a writing from or consent of Initial Buyer for such a waiver or amendment shall not be required, except where such waiver would adversely affect the rights of Initial Buyer hereunder.

(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.

Section 12.04. Fees and Expenses. Except as otherwise expressly provided herein, all fees, costs and expenses incurred in connection with this Agreement shall be paid by the Party incurring such fee, cost or expense.

Section 12.05. Successors and Assigns**. The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns; *provided,* that no Party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of each other Party. Notwithstanding the foregoing sentence, (a) Buyer shall have the right to assign to any one or more of its Affiliates any of its rights or obligations under this Agreement, the Transaction Documents or any other document or instrument, in whole or in part; *provided,* that no such assignment hereunder shall relieve Buyer of its obligations under**

this Agreement, the Transaction Documents or any other such document or instrument, and (b) Initial Buyer may assign its rights and obligations hereunder to ERP Iron Ore pursuant to the ERP Assumption pursuant to Section 2.11. Following an assignment by Buyer pursuant to clause (b) of the immediately preceding sentence, Buyer shall, automatically and without further action by Buyer, be released from any liability hereunder, and from any further obligation hereunder, except with respect to Section 6.03, Section 11.01(i) and the delivery of the DIP Credit Release pursuant to Section 2.10(d).

Section 12.06. Governing Law. This Agreement, and all claims or causes of action based upon, arising out of, or related to this Agreement or the transactions contemplated hereby, shall be governed by and construed in accordance with the law of the State of New York, without regard to the conflicts of law rules of such state to the extent such principles or rules would require or permit the application of laws of another jurisdiction.

Section 12.07. Jurisdiction. To the fullest extent permitted by Applicable Law, the Parties hereto (a) agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the Transaction Documents or the transactions contemplated hereby or thereby shall be brought (i) in the Bankruptcy Court, if brought prior to the entry of a final decree closing the Bankruptcy Cases, and (ii) in the United States District Court for the District of Minnesota (or, if such court shall be unavailable, any other court of the State of Minnesota) (the "**Minnesota Courts**"), if brought after entry of such final decree closing the Bankruptcy Cases, and shall not be brought, in each case, in any other state or federal court in the United States, (b) agree to submit to the exclusive jurisdiction of the Bankruptcy Court or the Minnesota Courts, as applicable, pursuant to the preceding clauses (a)(i) and (a)(ii), for purposes of all suits, actions or proceedings arising out of, or in connection with this Agreement or the Transaction Documents or the transactions contemplated hereby and thereby, (c) waive and agree not to assert any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court or that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any Party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each Party agrees that service of process on such Party at the addresses provided in Section 12.01 shall be deemed effective service of process on such Party.

Section 12.08. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 12.09. Counterparts; Effectiveness; Third Party Beneficiaries. 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. Signatures delivered by pdf or facsimile are binding. This Agreement shall become effective when each Party shall have received a counterpart hereof signed by the other Parties. Until and unless each Party has received a counterpart hereof signed by the other Parties, this Agreement shall have no effect and no Party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication). No provision of this Agreement is intended

to confer any rights, benefits, remedies, or Liabilities hereunder upon any Person other than the Parties and their respective successors and assigns.

Section 12.10. Entire Agreement. This Agreement, the Transaction Documents, the Sale Order and the Confidentiality Agreement constitute the entire agreement between the parties with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter of this Agreement.

Section 12.11. Bulk Sales Laws. Buyer and the Sellers each hereby waive compliance by the Sellers with the provisions of the "bulk sales," "bulk transfer" or similar laws of any state.

Section 12.12. Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other Governmental Authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated. Upon such a determination, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

Section 12.13. Disclosure Schedules. The Sellers and Buyer, as applicable, have set forth information on the Disclosure Schedule in a section thereof that corresponds to the section of this Agreement to which it relates. A matter set forth in one section of a Schedule need not be set forth in any other section so long as its relevance to such other section of the Schedule or section of the Agreement is apparent on the face of the information disclosed therein to the Person to which such disclosure is being made. The Parties acknowledge and agree that (i) the Schedules to this Agreement may include certain items and information solely for informational purposes for the convenience of Buyer or the Sellers, as applicable, and (ii) the disclosure by the Sellers or Buyer, as applicable, of any matter in the Schedules shall not be deemed to constitute an acknowledgment by the Sellers or Buyer, as applicable, that the matter is required to be disclosed by the terms of this Agreement or that the matter is material.

Section 12.14. Specific Performance. The Parties acknowledge and agree that irreparable damage for which monetary damages, even if available, would not be an adequate remedy, would occur if the Parties do not perform any provision of this Agreement within the terms hereof, or otherwise breach any such provision, and that in that event the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement or to enforce specifically the performance of the terms and provisions hereof, in addition to any other remedy to which they are entitled at law or in equity. Each Party agrees that it will not oppose the granting of an injunction, specific performance and other equitable relief when expressly available pursuant to the terms of this Agreement on the basis that (i) there is adequate remedy at law or (ii) an award of specific performance is not an appropriate remedy for any reason at law or equity. Any Party seeking an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement shall not be required to provide any bond or other security in connection with any such order or injunction.

EXHIBIT A

Restated and Amended Technology License Agreement

RESTATED AND AMENDED TECHNOLOGY LICENSE AGREEMENT

This Restated and Amended Technology License Agreement (this "**Agreement**") is executed as of the 6th day of December, 2016 ("**Execution Date**"), by and among Magnetation, Inc. ("**MagInc**" or "**Licensor"**), a corporation organized under the laws of the State of Minnesota, and Magnetation LLC (the "**Company**", "**MagLLC**", or "**Licensee"**), a Delaware limited liability company. MagLLC and MagInc are referred to collectively as the "**Parties**" and separately as a "**Party.**"

RECITALS

WHEREAS, on October 4, 2011, the Parties entered into, among other agreements, that certain Technology License Agreement (as amended on May 16, 2013, and further amended on May 20, 2013 by a Consent and Waiver Regarding Grant of Security Interest in Technology License, collectively the "**TLA**"); and

WHEREAS, MagInc is the manager of the assets, operations and personnel of MagLLC, and its affiliates, under a Management Services Agreement dated October 4, 2011 ("**MSA**") between MagInc and MagLLC, as amended by that certain Global Settlement Agreement approved by Order of the Bankruptcy Court

WHEREAS, subsequent to the last amendment to the TLA on May 20, 2013, MagInc has developed various new mineral processing technologies and intellectual property ("**New IP**" as defined in Appendix A) that are useful for making Fired Pellets and Concentrate with improved quality, recovery and productivity and are in use in the Facilities;

WHEREAS, the New IP are not included in the scope of the TLA;

WHEREAS, the New IP have been put into use at the Facilities of MagLLC by MagInc through usage rights provided to MagLLC by MagInc pursuant to the MSA (see definition of "**Existing Mag Process Enhancements**" provided in Appendix A);

WHEREAS, Licensor developed and has the rights to license certain software (the "**Pellet Plant Automation Software**" or "**PPAS**") useful for controlling, managing, and optimizing operations at Licensee's Pellet Plant;

WHEREAS, MagInc has held, and continues to hold licenses and related rights for the use of the New IP sufficient to fulfill its obligations under the MSA and has provided use of the New IP to MagLLC in the course of its management of the assets, operations and personnel of MagLLC pursuant to the MSA;

WHEREAS, MagLLC now wishes to hold a written license directly to MagLLC that includes not only the intellectual properties originally included in the TLA but also includes the New IP, incorporates a Term that does not expire with the expiration of the MagLLC Operating Agreement or the MSA, and provides a definition of Improvements that is not limited to patent protected improvements;

WHEREAS, MagInc is willing and able to provide MagLLC such a license that will provide usage rights to the New IP on the terms and conditions provided below and will continue the license of the Licensed Technology under the TLA on an uninterrupted basis;

WHEREAS, MagLLC and its affiliates are debtors and debtors-in-possession (collectively, the "**Debtors**") in the jointly- administered chapter 11 cases captioned *In re Magnetation LLC, et al.*, Case No. 15-50307 (Bankr. D. Minn.) (collectively, the "**Chapter 11 Cases**") pending in the United States Bankruptcy Court for the District of Minnesota (the "**Bankruptcy Court**");

WHEREAS, the Debtors filed for protection under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**") on May 5, 2015 (the "**Petition Date**"), in the Bankruptcy Court;

WHEREAS, the Debtors' Chapter 11 Cases are being jointly administered; and

WHEREAS, pursuant to the Bankruptcy Court's May 7, 2015 *Order (I) Granting an Expedited Hearing and (II) Authorizing the Debtors to Assume the Technology License Agreement* [ECF No. 68], the Bankruptcy Court authorized MagLLC to assume, pursuant to 11 U.S.C. §365, the TLA for the reasons set forth in Debtors' May 5, 2015 *Notice of Hearing and Joint Motion for an Order (I) Granting an Expedited Hearing and (II) Authorizing the Debtors to Assume the Technology License Agreement* [ECF No. 27];

WHEREAS, MagLLC is a party to that certain Asset Purchase Agreement dated as of December 6, 2016 (the "**Purchase Agreement**") which contemplates the execution and delivery of this Agreement to be effective as of the Effective Date (as defined herein);

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree that the TLA is replaced in its entirety with the following:

Article 1. Definitions.

Section 1.1. For purposes of this Agreement, and in addition to certain terms defined on first use herein, the terms listed in Appendix A shall have the meanings set forth therein. Defined terms are capitalized in this Agreement. Capitalized terms which are not so defined shall have their usual and customary meaning in the context in which used.

Article 2. License.

Section 2.1. License Grant.

Subsection 2.1.1 Subject to the terms and conditions set forth in this Agreement (including, without limitation, Licensee (or any permitted assignee or successor) delivering all of

the considerations provided in Article 3 below), Licensor hereby grants to Licensee a perpetual, non-exclusive, royalty-free (other than the pass-through Minnesota Royalties), non-transferable (except as set forth in Section 13.3), non-sublicensable, right and license, for the Term (but subject to termination as set forth herein) to use and practice the Licensed Technology and Improvements at the Facilities. This license will become effective on the Effective Date.

Section 2.2. Limitations and Obligations of Licensee.

Subsection 2.2.1. Licensee hereby acknowledges that the license granted in Section 2.1 does not include any rights to trademarks, service marks, trade dress, trade names, graphics, registrations, or depictions of Licensor or any Technology or Intellectual Property owned or licensed by Licensor other than as specifically set forth in this Agreement. For avoidance of doubt the terms "Magnetation™", "Rev3 Separator™", "Rev3.1 Separator™", "Magnetation Process™", and "Natural pH Flotation Process™", are trademarks owned by the Licensor and all rights therein are reserved by Licensor.

Subsection 2.2.2. Nothing herein shall be construed as granting, by implication, estoppel or otherwise, any ownership right to Licensee in or to the Licensed Technology.

Subsection 2.2.3. (Intentionally Omitted)

Subsection 2.2.4. Licensee agrees, for itself and its controlled Affiliates, not to challenge the validity of any of the Licensed Technology.

Subsection 2.2.5. Licensee shall notify Licensor if Licensee desires to make any material modifications to any Rev3.1™ Separator, the PAS, the PPAS, or any part of the Licensed Technology licensed under this Agreement, which modifications shall be deemed Improvements and subject to Article 6 of this Agreement but which shall not be made without the prior written consent of Licensor given or withheld in Licensor's discretion exercised in good faith.

Subsection 2.2.6. Licensee will not reverse engineer, remove in electronic or other form from any of its facilities (including the Facilities), decompile, electronically transmit across the Internet, or disassemble the Process Automation Software (including the PPAS), or any proprietary and/or trade secret techniques, know-how, algorithms or processes embodied therein. Licensee will not remove, alter, cover or obfuscate any proprietary legend or restrictive notice from any of the Process Automation Software (including the PPAS). Licensee will not contest or otherwise challenge or attack the copyright, trade secret, trademark, service mark, trade dress, patent, or other intellectual or proprietary rights held by Licensor in any Licensed Technology, Process Automation Software, PPAS, or the validity of the licenses being granted to the Licensed Technology and Improvements herein. Subject to the prior written approval of Licensor (given or withheld in Licensor's discretion exercised in good faith), Licensee may make Improvements to and of such software and/or any other Licensed Technology; however, such Improvements shall be subject to Article 6 of this Agreement.

Subsection 2.2.7. Except as expressly provided for in this Agreement, Licensee agrees that without the prior written consent of Licensor (given or withheld in Licensor's discretion), Licensee will not sell, rent, lease, sublicense, assign, transfer or lend any device or part or portion of a device that incorporates or embodies the Licensed Technology to third parties and will not copy or transfer the PPAS, or the Process Automation Software in whole or in part. Except as expressly provided for in this Agreement, if Licensee, without the prior written consent of Licensor (given or withheld in Licensor's discretion), transfers possession of any device that incorporates or embodies the Licensed Technology or any part or portion thereof to a third party, or copies or transfers the Process Automation Software (including the PPAS) in whole or in part, the license for the Licensed Technology shall terminate, provided that at the option of Licensor, such termination may be rescinded if such breach is cured to Licensor's reasonable satisfaction within five (5) days of the delivery of written notice by Licensor of such breach. Licensee shall promptly provide Licensor notice of any such transfer of possession or copying or transfer of the Process Automation Software or the PPAS. The foregoing restrictions shall not apply to any device or part or portion thereof from which all Licensed Technology and Improvements have been removed.

Subsection 2.2.8. Licensee shall cause any of its assignees or sublicensees to act, and not fail to act, to assure compliance with all of the terms and conditions of this Agreement, shall be fully responsible for the acts and omissions of such assignees and sublicensees, shall indemnify Licensor and hold it harmless from any and all losses, claims, damages and expenses of any kind arising out of or in connection with such acts or omissions, and recognizes Licensor as a third party beneficiary of any such assignment or sublicense with the right to enforce the terms thereof upon any lapse or failure of Licensee to do so and to pursue any and all rights and remedies of Licensee against any such assignee or sublicensee with respect to the Licensed Technology and Improvements.

Article 3. Consideration.

Section 3.1. Consideration. In consideration of the grant of the license set forth in Section 2.1 above, Licensee agrees to pay Licensor as follows:

(a) Within twenty (20) days after the close of each Calendar Quarter ending after the Effective Date of this Agreement (commencing with the Calendar Quarter ending December 31, 2016), Licensee shall pay to Licensor a royalty in an amount that the Licensor or any one or more of its Affiliates is required to pay pursuant to the Royalty Agreement (with all amendments effective as of the close of each Calendar Quarter) with the State of Minnesota Office of the Commission of the Iron Range Resources and Rehabilitation and the Department of Employment and Economic Development. Licensor shall pay over all royalties to the State of Minnesota.

(b) The royalty shall be paid in US dollars. Licensee shall pay and be responsible for payment of all taxes, charges, duties and other payments to any governmental entity applicable to this transaction, other than taxes on any income attributable to Licensor. Interest is due on all late payments (greater than 20 days after their due date) and will be calculated at the rate of 1.50% per month. Payments hereunder may be made by wire transfer to:

Bank Name:	JP Morgan Chase Bank
ABA Routing #:	021000021
Beneficiary Acct. #:	886278464
Beneficiary Name:	Magnetation, Inc.

(c) The payment of the royalty shall be guaranteed by Licensee or any permitted assignee contemplated by Section 13.3. The total tonnage of Shipped Concentrate produced shall be reported by email within 20 days of the end of each month to Licensor and reconciled, to the satisfaction of the Licensor on a monthly basis, to the tonnage Shipped from the Facilities using generally accepted industry practices and U.S. Generally Accepted Accounting Principles ("**USGAAP"**) for such reconciliations. The determination of the Shipped Concentrate produced weights shall be done using methods and practices that conform to USGAAP and accepted industry practices and shall be subject to audit by Licensor at any time upon two days advance written notice by email to Licensee. Licensee shall notify Licensor three days in advance by email of any calibrations to belt scales, rail scales, or precision load out scales or load cell systems so that Licensor may, at its discretion, observe such calibrations and inspect the resulting data.

Article 4. Books, Records and Reports.

Section 4.1. Records. Licensee shall keep complete and detailed books and records in a manner consistent with industry standards and, as applicable, USGAAP of all Concentrate produced and Shipped at the Facilities for which a royalty is due under this Agreement.

Section 4.2. Reports. Licensee shall provide to Licensor a detailed, written report ("**Report**") on or before the tenth day following the end of each Calendar Quarter setting forth the following information:

(a) the number of Dry Metric Tonnes and Natural Metric Tonnes of Shipped Concentrate produced and Shipped by Licensee under this Agreement during such Calendar Quarter, and

(b) the calculation of the royalties due for such Calendar Quarter under Section 3.1 of this Agreement.

At Licensor's sole cost (subject to the second to last sentence of this Section), once per Calendar Year by right and at any other time for good reason, Licensor shall be entitled to appoint an independent, nationally-recognized auditor to audit the books and records set forth in Section 4.1 during normal business hours and upon at least seventy-two (72) hours' prior written notice to verify the accuracy of the Reports generated for each Calendar Quarter during the preceding Calendar Year. Such auditor shall sign a reasonable non-disclosure agreement to protect the Company Information. Licensor may also audit Licensee's use of the PPAS or PAS for compliance with this Agreement, upon reasonable notice. In the event that such audit reveals any use of the PPAS or PAS by Licensee other than in full compliance with the terms of this Agreement or any shortfall discrepancy in the reported tonnage of more than 0.5%, Licensee shall reimburse Licensor for all reasonable expenses related to such audit in addition to any other

costs or liabilities Licensor may incur as a result of such non-compliance. In addition to the audit rights provided above, the Licensor shall have unrestricted and unfettered access to the Facilities on reasonable notice for purpose of monitoring compliance of the Licensee with the terms and conditions of this Agreement.

Article 5. Delivery of Licensed Technology.

Section 5.1. Licensor has delivered and put to use and Licensee has received and accepted all of the Licensed Technology.

Article 6. Improvements.

Section 6.1. Licensee hereby acknowledges and agrees that, subject to Licensee providing notification to and obtaining consent from Licensor per Section 2, any Improvements developed by Licensee, an Affiliate of Licensee or by an employee, officer, other representative or independent contractor of Licensee or its Affiliate (each of the foregoing, together with Licensee and any Affiliate of Licensee, individually a "**Licensee Party**" and collectively the "**Licensee Parties**") shall be owned by Licensor (or its designated Affiliate), and Licensee hereby assigns unto Licensor (or to Licensor's designated Affiliate), and agrees to further assign and to cause each Licensee Party (as applicable) as required by Licensor (or such designated Affiliate) to assign, all right, title and interest in and to all Intellectual Property Rights in such Improvements; the same to be held and enjoyed for the sole and exclusive use and benefit of Licensor or Licensor's designee, its successors and assigns, subject, however to the license reserved to Licensee in Section 2.1 above. In the event Licensee Parties other than Licensee have made any of the Improvements to be assigned to Licensor hereunder, in order to implement the provisions of this Section 6.1, Licensee shall, if necessary, acquire all right, title and interest to and in such Improvements from such Licensee Parties in order to assign such Improvements to the Licensor (or its designated Affiliate). Licensor shall have the right (but not the obligation and exercised in its discretion) to file, prosecute, maintain in force, and enforce, in its own name (or the name of its designated Affiliate) and at its own expense, any patent applications, patents, or copyrights, U.S. and foreign, for any Improvements developed by a Licensee Party or Parties. Licensee Parties shall disclose and notify Licensor in writing of all Improvements conceived within five days of such conception and shall notify Licensor in writing within five days of the end of each month of any progress made in reducing to practice any such Improvements, provided that failure to provide such notice shall not constitute a breach or default of this Agreement, unless such failure results from willful misconduct or bad faith and results in a material adverse effect on Licensor's interest in the applicable Improvement. Licensor shall have unrestricted and unfettered access to all the Facilities on reasonable notice to monitor use of the Licensed Technology and Improvements thereof.

Section 6.2. Any Improvements that are made solely or jointly by employees, representatives, licensees, or independent contractors of Licensor or its Affiliates (each of the foregoing, together with Licensor and any Affiliate of Licensor, individually a "**Licensor Party**" and collectively the "**Licensor Parties**") shall be the sole and exclusive property of Licensor or its designated Affiliate.

Section 6.3. (Intentionally Omitted)

Section 6.4. Common Interest. The Parties and any permitted assignee or sublicensee of the Licensed Technology have a common interest in the Licensed Technology and any Improvements, and any disclosure to the others contemplated by this Agreement or which occurs in connection herewith or among such parties with respect to the Licensed Technology or any Improvements shall not in any way waive, destroy, abridge or diminish the confidentiality or privileged nature of any such information. The legal privileges, protections and confidentiality obligations applicable to such information, including the attorney-client privilege, the attorney work product doctrine, and the common interest privilege, shall apply to the same extent as if such information had not been so disclosed.

Article 7. Representations and Warranties.

Section 7.1. General Representations and Warranties. Both Parties hereto warrant, represent and covenant to each other during the Term, as an essential part of this Agreement that: (i) each is duly organized and validly existing and in good standing under the laws of the state of its incorporation or formation; (ii) subject to entry of a Bankruptcy Court order approving this Agreement, each has all requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder; (iii) the execution of this Agreement has been duly authorized by each party's board of directors, or board of managers, as the case may be, and has been duly executed and delivered by each Party and constitutes the valid and legally binding obligation of each Party, subject to entry of the Sale Order (which includes approval of this Agreement), enforceable in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application affecting enforcement of creditors' rights and general principles of equity that restrict the availability of equitable remedies; (iv) neither Party has any agreement with, or obligation to, any third party that conflicts in any way with its obligations under this Agreement; and (v) neither Party has, in any material respect, violated any applicable federal, state, local or foreign law, regulation or order or any other requirement of any governmental, regulatory or administrative agency or authority or court or other tribunal that would impair the rights granted by the Parties hereunder or materially impair such Party's ability to perform its obligations hereunder (including any law, regulation, order or requirement relating to securities, properties, business, products, manufacturing processes, advertising, sales or employment practices or terms and conditions of employment).

Section 7.2. Representations and Warranties of Licensee. Licensee represents, warrants and covenants during the Term that it will assume all liabilities and obligations, arising after the commissioning of the Facilities, for or relating to Licensee's manufacture, sale or delivery of Concentrate and Fired Pellets, including any action, litigation, suit, proceeding or claim regarding any of the foregoing, as well as from any voluntary or involuntary recall, recovery or withdrawal of the Concentrate or Fired Pellets sold by Licensee arising out of any of the foregoing.

Section 7.3. Representations and Warranties of Licensor. Licensor further represents, warrants and covenants that:

(a) the Licensed Technology licensed pursuant to Section 2.1 includes all of the Intellectual Property and Technology owned on the Effective Date by Licensor and its Affiliates applicable to the Licensee's, its Affiliates' and their combined businesses as they existed on the Petition Date through the Effective Date, including (i) any operation or non-operation of the Facilities on the Petition Date through the Effective Date, and (ii) the manufacturing, certification and testing of the Concentrate and Fired Pellets. The license granted to Licensee under this Agreement provides valid and continuing rights to use the Licensed Technology on the terms set forth herein and the Licensor has all powers and rights necessary to grant the licenses and rights granted hereunder on behalf of itself and each of its Affiliates which owns any of the Licensed Technology.

(b) To the knowledge of Licensor, Licensor and its Affiliates are not infringing, misappropriating, or otherwise violating and have not infringed, misappropriated, or otherwise violated, and Licensee will not infringe, misappropriate or otherwise violate, any Intellectual Property of any third party of which Licensor has knowledge through the use or practice of any Licensed Technology at the Facilities, assuming the use of the Licensed Technology as currently or previously used in the conduct of Licensee's business. There is no suit, claim or proceeding pending against or, to the knowledge of Licensor, threatened against Licensor or Licensee or any of their Affiliates (1) alleging that Licensor or Licensee or any of their Affiliates is infringing, misappropriating, or otherwise violating or has infringed, misappropriated or otherwise violated any Intellectual Property of any third party or (2) challenging the validity, enforceability, use or ownership of the Licensed Technology, in each case except as could not have a material adverse effect on Licensee.

(c) To the knowledge of Licensor, no person has infringed, misappropriated or otherwise violated or is currently infringing, misappropriating or otherwise violating any Licensed Technology in any material respect.

(d) To the knowledge of Licensor, other than as contemplated by the Debtors' Chapter 11 Cases, the Licensed Technology is not subject to any outstanding order, writ, decree or injunction which has been served on Licensor or as to which the Licensor has knowledge that restricts in any manner the use, transfer or licensing thereof or affects the validity, use or enforceability thereof.

Article 8. Maintenance and Enforcement of Licensed Technology and Improvements.

Section 8.1. Maintenance. During the Term, Licensor and its Affiliates shall adopt, implement, and maintain commercially reasonable policies and practices with respect to the protection of the Licensed Technology and Improvements, including taking such actions as Licensor deems in its sole discretion to be appropriate to file and prosecute, maintain in force, and enforce, in its own name or in the name of any of its Affiliates, at its own expense and in a commercially reasonable manner, patent applications, patents and registrations in any jurisdiction. Licensee shall assist Licensor, when reasonably requested by Licensor, in any efforts made by Licensor to protect the Licensed Technology and Improvements, in which event Licensor shall reimburse Licensee for any of Licensee's out-of-pocket costs and expenses incurred in connection therewith (other than the out-of-pocket costs and expenses of separate

counsel and similar advisors utilized by Licensee in connection with such registrations and applications).

Section 8.2. Unauthorized Use. Licensor shall have the sole right, at its sole discretion and at its expense, to bring and control an enforcement lawsuit or action to seek redress for any infringement, misappropriation, or other violation of its rights, including but not limited to any intellectual property rights, in the Licensed Technology or Improvements, and Licensee shall cooperate with Licensor during any such proceedings, with Licensor reimbursing Licensee for any out-of-pocket costs and expenses. Licensor shall retain any and all damages, settlement and/or compensation paid in connection with any such action brought by Licensor.

Section 8.3. Inquiries. If Licensee receives any inquiry regarding the acquisition of or need for rights in the Licensed Technology, such inquiry will be promptly referred to Licensor.

Article 9. Third Party Claims; Indemnification; Limitation of Liability.

Section 9.1. Mutual Indemnification. Each Party agrees to defend, indemnify and hold harmless the other Party and the other Party's Affiliates and their respective officers, directors, shareholders, members, employees, agents and customers from and against any and all losses, liabilities, damages, out-of-pocket costs and expenses (including reasonable attorneys' fees) arising from, relating to or in connection with any third-party Claim arising from, relating to or in connection with (i) a breach of any representation or warranty made by such indemnifying Party in this Agreement; and/or (ii) any breach or failure by such indemnifying Party to comply with or perform fully any covenant or agreement under this Agreement.

Section 9.2. Procedure. As a condition precedent to the obligations pursuant to Section 9.1, any Person entitled to indemnification hereunder (the "**Indemnified Party**") shall give prompt written notice to the Party providing indemnification hereunder (the "**Indemnifying Party**") of any Claim covered by the indemnification obligations hereunder; provided, however, that a delay in such notice shall not terminate the Indemnifying Party's indemnification obligations hereunder, unless such delay shall have materially impaired the defense of such Claim. The Indemnifying Party shall have sole and exclusive control of the defense of any such Claim, including the choice and direction of any legal counsel, provided that the Licensor shall have sole and exclusive control of the defense of any Claims which challenge the validity or infringement of the Licensed Technology or the Improvements (this proviso being referred to as the "Validity Proviso"). The Indemnified Party (and in the case of Claims falling within the Validity Proviso, the Licensor) shall cooperate, at the Indemnifying Party's sole cost, expense or liability, with the Indemnifying Party (or the Licensor, as applicable for purposes of the Validity Proviso) with respect to such Claim and the Indemnified Party (or the Licensor, as applicable for purposes of the Validity Proviso) shall promptly execute and deliver such documents, instruments or other agreements as may be requested by the Indemnifying Party with respect to any settlement or resolution thereof, provided that the Indemnified Party shall incur no liability, cost or expense in connection with such settlement or resolution. The Indemnified Party may not settle or compromise any such Claim without the prior written consent of the Indemnifying Party, other than matters covered by the Validity Proviso, which the Licensor may settle without the consent of the Indemnifying Party.

Section 9.4. Limitation on Damages. Except with respect to a Party's indemnification obligations herein, any breach of the confidentiality provisions herein and with respect to any willful misconduct of any Party, under no circumstances will a Party be liable to the other Party for any indirect, incidental, consequential, special or punitive damages of any kind arising from or relating to this Agreement, the Licensed Technology or the Improvements, whether grounded in tort (negligence, strict product liability or other tort), contract or other theory of liability and whether or not the other Party knows or has reason to know of the possibility of any such damages, except to the extent the indemnified Party pays such amount to a third party in respect of a claim of such third party as required by terms of this Agreement.

Article 10. Confidential Information.

Section 10.1. Restrictions. The Confidential Information of each Party may be used by the other Party only for the performance of its obligations and the exercise of its rights hereunder and may only be disclosed to its Affiliates and those employees, directors, governors, officers, subcontractors, consultants, equity holders, lenders or agents of such Party and its Affiliates who have a need to know in order to perform or exercise in accordance with this Agreement and who have either agreed in writing and for the benefit of the disclosing Party to abide by the confidentiality obligations in this Agreement or provided a confidentiality agreement or other similar undertaking to the receiving Party containing usual and customary provisions for the respective disclosees. Except and to the extent set forth in this Article 10, neither Party may disclose Confidential Information of the other Party to any other person, entity or the public without the prior written consent of the other Party. Notwithstanding the foregoing or anything else in this Agreement, the disclosure of content of the Provisional Patent Applications identified in Appendix A and the patent applications identified in Appendix A as "yet to be filed" is considered to be particularly sensitive information, the disclosure of which could potentially impact the patentability of the disclosed inventions, and therefore is not to be disclosed by Licensee other than on a strict "need to know" basis and then only disclosed to the receiving party after such party executes a confidentiality agreement with confidentiality provisions no less restrictive than this Article 10 of this Agreement.

Section 10.2. Compliance with Governmental and/or Judicial Requirements. If either Party receives a request to disclose any Confidential Information of the other Party (whether pursuant to a valid and effective subpoena, an order issued by a court or other governmental authority of competent jurisdiction or otherwise) and on advice of legal counsel that disclosure is required under applicable law, the first Party agrees that, to the extent permitted by applicable law, prior to disclosing any Confidential Information of the other Party, the first Party shall (i) notify the other Party of the existence and terms of such request or advice, (ii) cooperate with the other Party in taking legally available steps to resist or narrow any such request or to otherwise eliminate the need for such disclosure if requested to do so by the other Party, and (iii) if disclosure is required, it shall be the obligation of such first Party to use its reasonable best efforts to obtain a protective order or other reliable assurance that confidential treatment shall be afforded to such portion of the Confidential Information of the other Party as is required to be disclosed.

Section 10.3. Continuing Obligation. The obligations of nondisclosure and nonuse with respect to Confidential Information set forth above shall survive any termination of this Agreement, unless otherwise agreed upon by the Parties in writing.

Article 11. Term and Termination.

Section 11.1. Term. Subject to the entry of the Sale Order (which includes approval of this Agreement), this Agreement shall become effective as of the Effective Date. The " Term" of this Agreement shall commence on the Effective Date and shall, unless earlier terminated in accordance with this Article 11, continue perpetually, subject to termination as provided herein.

Section 11.2. Termination. This Agreement shall only terminate upon the mutual written agreement of the Parties, or pursuant to Section 11.3 hereof.

Section 11.3 Termination for Default. Each Party reserves the right to terminate this Agreement pursuant to the procedures set forth below upon the occurrence and continuation of any of the following events beyond any applicable grace or cure period (if one is provided) (each an "**Event of Default**"):

(i) Failure of Licensee to make any payments due hereunder, if such failure continues for more than five (5) business days after written notice has been received by Licensee from Licensor that such payment is past due;

(ii) Material breach of the confidentiality and nonuse obligations in Article 10 of this Agreement;

(iii) A material breach of this Agreement by a Party (other than breaches described in clauses (i) and (ii) of this Section) if such breach is not cured within five (5) days of the delivery of written notice by the other Party providing a reasonable description of such breach, provided that, if such cure cannot reasonably be effected within such five (5) days, then such additional reasonable period of time (not to exceed thirty (30) days) as may be reasonably requested by the breaching Party to effect such cure provided that the breaching Party promptly commences and diligently pursues such cure; or

(iv) Either (i) the Buyer (as defined herein) does not cancel and release the Intercompany Note (as that term is defined in the Purchase Agreement) as provided for in the Support Agreement dated as of December 6, 2016 ("**Support Agreement**"), or (ii) the Sale Order as entered by the Bankruptcy Court does not provide that (1) the Initial Buyer (as defined in the Purchase Agreement) confirms it has no right, title, or interest in the Intercompany Note, and in the event any such right, title, or interest may exist, disclaims any right, title, or interest in the Intercompany Note, and (2) the Debtors disclaim any right, title, or interest in the Intercompany Note at Closing (as that term is defined in the Purchase Agreement).

Section 11.4. Effects of Termination. Upon the occurrence and during the continuation of any Event of Default, the non-breaching Party shall have the right either to terminate this Agreement or to suspend all or any portion of this Agreement. Upon the termination of this Agreement, all rights granted to Licensee by Licensor under Section 2.1 of this Agreement shall expire. Unless otherwise agreed upon by the Parties, upon termination Licensee shall return, and will cause each of its Affiliates and its assignees, to Licensor all printed and electronic materials which are a part of the Licensed Technology and Improvements that had been received by Licensee before the Effective Date or during the Term of this Agreement, including copies thereof, if any, and shall cease to use the Licensed Technology and the Improvements.

Section 11.5. Surviving Provisions. The following Articles and Sections shall survive termination of this Agreement: Articles 1, 9, 10, 11.5, 12 and 13.

Article 12. Dispute Resolution.

Section 12.1. Resolution by Mutual Agreement. Other than any dispute related to Section 11.3 above which Events of Default shall automatically result in the effects per Section 11.4, any other controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled first, by good faith efforts of the Parties to reach mutual agreement as set forth in Section 12.2 below.

Section 12.2. Initial Resolution. A Party that wishes to initiate the dispute resolution process shall send written notice to the other Party with a summary of the controversy and a request to initiate these dispute resolution procedures. Each Party shall appoint a knowledgeable, responsible representative of that Party who has the authority to settle the dispute and to meet and negotiate in good faith to resolve the dispute, which representatives shall meet within fifteen (15) days of the notice. The discussions shall be left to the discretion of the representatives, who may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of these negotiations shall be treated as Confidential Information developed for purposes of settlement, shall be exempt from discovery and production, and shall not be admissible in any arbitration or lawsuit pursuant to Rule 408 of the Federal Rules of Evidence. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and may, if otherwise admissible, be admitted in evidence in the arbitration or lawsuit. The Parties agree to pursue resolution under this Section 12.2 for a minimum of sixty (60) days before initiating an action in the appropriate jurisdiction; provided, however, that each Party reserves the right to pursue and defend its rights in accordance with the provisions of this Article 12 after the said sixty (60) day period.

Section 12.3. Arbitration. All disputes, claims, controversies or differences arising out of or relating to this Agreement, or the breach thereof, that are not resolved in accordance with Section 12.2 hereof shall be subject to and decided solely by confidential arbitration according to the Commercial Arbitration Rules of the American Arbitration Association. The place of arbitration shall be Indianapolis, Indiana. The prevailing Party in arbitration shall be entitled to recover from the non-prevailing Party all costs, expenses and reasonable attorneys' fees incurred in connection with such arbitration.

Section 12.4. Injunctive Relief. The foregoing notwithstanding, Licensor shall have the right to seek injunctive relief in an applicable court of law or equity pending resolution of the dispute in accordance with the foregoing.

Article 13. Miscellaneous.

Section 13.1. Notice. All notices to the Licensee are to be sent by nationally recognized overnight courier or by facsimile (with confirmation of successful transmission), addressed to the Board of Managers of the Licensee at the following address or to the address as specified by Licensee from time to time, with a copy of each such notice to be delivered concurrently to the Persons as set forth below or as specified by Licensee from time to time. All notices to Licensor are to be sent by nationally recognized overnight courier or by email (with confirmation of successful transmission), addressed to the following address or at the address as may be specified by Licensor from time to time in a notice to the Company, with a copy of each material notice to be delivered concurrently to the Persons as set forth below or as specified by Licensor from time to time. All notices given pursuant to this Agreement shall be deemed to have been duly given (i) on the second (2nd) business day following the day such notice was sent by nationally recognized overnight courier, or (ii) on the date of service if delivered by email (with the confirmation of successful transmission acting as confirmation of service).

To Licensee:	To Licensor:
Prior to closing on the Purchase Agreement: Michael J. Talarico Magnetation LLC 102 NE 3rd Street, Suite 120 Grand Rapids, MN 5574 michael.talarico@fticonsulting.com with a copy to: Marshall S. Huebner Davis Polk & Wardwell LLP 450 Lexington Avenue New York, New York 10017 marshall.huebner@davispolk.com Prior to and after closing on the Purchase Agreement: Tom Clarke ERP Iron Ore, LLC 15 Appledore Lane Natural Bridge, VA 24578 tom.clarke@kissito.org	Larry Lehtinen Magnetation, Inc. larry.lehtinen@magnetation.com 102 NE 3rd Street Suite 120 Grand Rapids, MN 55744 -and – Krieg DeVault LLP Attention: Robert A. Greising One Indiana Square, Suite 2800 Indianapolis, IN 46204 rgreising@kdlegal.com and generalcounsel@kdlegal.com

with a copy to: Oscar Pinkas Dentons US LLP 1221 Avenue of the Americas New York, NY 10020 oscar.pinkas@dentons.com	

Either Party may change its designated notice address by giving the other Party written notice.

Section 13.2. Compliance. Licensor and Licensee shall each comply with the provisions of all applicable federal, state, and local laws, ordinances, regulations and codes (including procurement of required permits or certificates) in fulfillment of their obligations under this Agreement. All Licensed Technology are subject to U.S. export and foreign transactions control regulations. Each Party agrees to comply with, and Licensee will cause its Affiliates and any of its assignees to comply with, all applicable U.S. export control laws and regulations, specifically including the requirements of the Arms Export Control Act, 22 U.S.C. 2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C. F. R. 120 et seq.; and the Export Administration Act, 50 U.S.C. app. 2401-2420, including the Export Administration Regulations, 15 C.F.R. 730-774; including the requirement for obtaining any export license or agreement, if applicable. Without limiting the foregoing, Licensee agrees that it will not transfer, will cause its Affiliates not to transfer, any information it receives from Licensor that constitutes an export of controlled items, data, or services, to include transfer to foreign persons employed by or associated with, or under contract to Licensee or Licensee's suppliers, without the authority of an export license, agreement, or applicable exemption or exception.

Section 13.3. Assignment. Neither Party may, without written approval from the other Party, transfer, convey, sell, or assign any of its respective rights or obligations under this Agreement to a third party, whether in the context of a change of control or asset sale of Licensee or otherwise; provided that, notwithstanding the foregoing, Licensor consents to Licensee assigning this Agreement to ERP Iron Ore, LLC ("**Buyer**"), provided that the Bankruptcy Court enters the Sale Order (which approves such assignment). Notwithstanding the foregoing or anything else in this Agreement, MagInc may assign its rights and obligations under this Agreement to an Affiliate. For avoidance of doubt, it is understood by the Parties that no part of any equipment, hardware or software that is part of or comprises or contains any part of the Licensed Technology, at the time of removal, can be removed from the Facilities without the prior written consent of the Licensor (given or withheld in its discretion exercised in good faith).

Section 13.4. Copyright. Copyright on and title to any data or intellectual property furnished to Licensee as well as the copyright on all copies made by Licensee shall remain with Licensor.

Section 13.5. Entire Agreement. This Agreement (including Appendix A) represent the entire and integrated agreement of the Parties, and supersedes all prior agreements or understandings, whether written or oral, with respect to the subject matter hereof, including

without limitation the TLA. As of the date hereof, there are no agreements, arrangements or understandings, whether oral or written, between the Parties relating to the subject matter of this Agreement that are not set forth or expressly referred to herein. For clarity, the Parties acknowledge that the MSA continues in full force and effect as amended by the Global Settlement Agreement.

Section 13.6. Controlling Law. THIS AGREEMENT IS GOVERNED BY AND IS TO BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE WITHOUT GIVING EFFECT TO ITS RULES CONCERNING CONFLICTS OF LAW. Subject to Section 12.3, each Party hereby irrevocably waives to the fullest extent permitted by law any objection that it may now or hereafter have to the laying of exclusive venue in the State or Federal courts, respectively, of Indianapolis, Indiana, United States of America, and any claim that such proceeding has been brought in an inconvenient forum. The UN Convention on the International Sale of Goods shall not apply to this Agreement.

Section 13.7. Waiver of Terms and Conditions. No failure or delay on the part of either Party in the exercise of any power or right hereunder shall operate as a waiver thereof. No single or partial exercise of any right or power hereunder shall operate as a waiver of such right or of any other right or power. The waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any other or subsequent breach hereunder. All rights and remedies existing under this Agreement are cumulative with, and not exclusive of, any rights or remedies otherwise available.

Section 13.8. Binding Nature. Except as otherwise provided in this Agreement, this Agreement is binding upon and inures to the benefit of the Parties and their respective successors, personal representatives, heirs, devisees, guardians and permitted assigns.

Section 13.9. Invalidity. In the event that any provision of this Agreement is held to be invalid, the validity of the remaining provisions of this Agreement shall not in any way be affected thereby.

Section 13.10. Counterparts. This Agreement and any amendment hereto may be executed in multiple counterparts, each of which is an original and all of which constitute one agreement or amendment, as the case may be, notwithstanding that both of the Parties are not signatories to the original or the same counterpart, or that signature pages from different counterparts are combined, and the signature of either Party to any counterpart is a signature to and may be appended to any other counterpart.

Section 13.11. Force Majeure. Should any circumstance(s) beyond the reasonable control of either Party occur which delays or renders impossible the performance of any of its obligations under this Agreement, the term for performance of such obligation shall be extended for a period equal to the effect of such circumstance(s), provided such Party shall notify the other Party in writing within thirty (30) days after the occurrence of such circumstance(s). In either such event, both Parties shall promptly meet to determine an equitable solution to the effects of any such event, provided that either Party who fails because of force majeure to perform its

obligations hereunder will upon the cessation of the force majeure take all reasonable steps within its power to resume with the least possible delay compliance with its obligations. Events of force majeure shall include war, revolution, invasion, insurrection, riots, mob violence, sabotage or other civil disorders, acts of God, acts, laws, regulations or rules of any government or governmental agency and any other circumstances beyond the reasonable control of the Party, the obligations of which are affected thereby.

Section 13.12. Relationship of the Parties. No Party shall have any authority to act for or on behalf of or to bind another Party in any fashion.

Section 13.13. Construction. The headings contained in this Agreement are for reference purposes only and do not affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, include all other genders. The singular includes the plural and vice versa. This Agreement has been jointly drafted by the Parties and shall not be construed against either Party. The word "including" and words of similar import when used in this Agreement shall mean "including without limitation," unless otherwise specified.

Section 13.14. Amendments. All amendments, modifications or supplements to this Agreement shall be in the written form and agreed upon and signed by authorized representatives of each Party to become legally binding. Such amendments, modifications and supplements shall form an integral part of this Agreement. This Agreement shall not be reformed, altered, or modified in any way by any practice or course of dealing prior to or during the Term of this Agreement.

Section 13.15. No Third-Party Beneficiaries. This Agreement is made solely and specifically among and for the benefit of the Parties hereto and their respective successors and permitted assigns, and no other person, unless express provision is made herein to the contrary, is to have any rights, interests or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise.

Section 13.16. Fair Consideration. The Parties hereby acknowledge and agree that the consideration set forth herein represents fair consideration and reasonably equivalent value for the transactions, covenants, and agreements herein set forth, which consideration was agreed upon as the result of arm's length, good-faith negotiations between the Parties and their respective representatives.

Section 13.17 Effective Date. The Effective Date shall occur on the day on which the Sale Order (including an approval of this Agreement) has been entered by the Bankruptcy Court and is final.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on the date first written above and delivered by their duly authorized officers to be effective as of the Effective Date.

MAGNETATION, INC. ("**Licensor**")	MAGNETATION LLC ("**Licensee**")
Signed: _____	Signed: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

Appendix A
Definitions

All defined terms refer to the singular or plural as the context requires.

"Affiliate" shall mean, with respect to either Party, any person, partnership, corporation, organization, or entity that directly or indirectly controls, or is directly or indirectly controlled by, or is under direct or indirect common control with such Party. As used in this Agreement, a person or entity shall be regarded as "controlling" an entity if, (i) it owns more than fifty percent (50%) of the voting stock or other ownership interest of such other entity; or, (ii) it directly or indirectly possesses sufficient authority to direct the adoption and execution of policies, management, and operations of such entity by any means whatsoever. For purposes of this Agreement, Licensor and Licensee shall not be considered Affiliates.

"Agreement" shall mean this agreement, together with all Appendices, Annexes, Exhibits, and any amendments attached hereto.

"Calendar Quarter" shall mean and refer to those periods of time during each calendar year that are respectively from January 1 to and including March 31, from April 1 to and including June 30, from July 1 to and including September 30, and from October 1 to and including December 31.

"Concentrate" shall mean a merchantable iron oxide concentrate containing a minimum total iron content (Fe_{tot}) of 63.50% on a dry basis and a maximum silicon dioxide (SiO_2) content of 6.5% on a dry basis.

"Confidential Information" shall mean (a) all Licensed Technology (b) information, documents and materials relating to each Party's financial condition, management and other business conditions, prospects, plans, procedures, infrastructure, security, information technology procedures and systems, and other business or operational affairs; (c) any internal project names used by any Party; (d) any documentation provided or otherwise made accessible in any media if marked "Confidential," "Proprietary," or the like, or if notified in writing of the same within thirty (30) days of its initial disclosure; and (e) any other information transmitted in any form (orally, aurally, visually, sense of touch, or the like) if notified in writing of its confidential status within thirty (30) days of its initial disclosure; ***however***, in no case shall Confidential Information include any Excluded Information as hereinafter defined.

"Dry Metric Tonne" shall mean a unit of mass, containing 0% moisture that is 2,204.6 pounds in weight.

"Excluded Information" shall mean any information that (i) was lawfully in the receiving Party's possession, with no restriction on use or disclosure, prior to its acquisition from the disclosing Party; (ii) was received in good faith by the receiving Party, with no restrictions on use or disclosure, from a third party that did not misappropriate the same and that is not subject to any confidential obligation to the disclosing Party; (iii) is now or later becomes publicly known through no breach of confidential obligation by the receiving Party; (iv) was released by

the disclosing Party to any other person, firm or entity (including governmental agencies or bureaus) without restriction on use or disclosure; and/or (v) is independently developed by or for the receiving Party without any reliance on or use of Confidential Information of the disclosing Party.

"Existing Mag Process Enhancements" shall mean the WHIMS Cobber Circuit™, the WHIMS Scavenger Circuit™, the Natural pH Flotation Process™, the Mag Fluxed Pellet Quality Optimization Process and Methodology™, the Mag Filtration Circuit™ and the associated upgrades to the PAS needed for implementation of these process technology enhancements.

"Facilities" shall mean Plant 1, Plant 2, and Plant 4 located in Itasca County of Minnesota, a rail load-out facility (the Jessie Load-Out, and the Pellet Plant located in White County of Indiana.

"Fired Pellets" shall mean an agglomerated form of iron oxides suitable for feed to a blast furnace or any other facility related to making iron or steel (including but not limited to a direct reduction furnace, a basic oxygen furnace, a sinter plant, and a briquetting plant) including whole pellets, pellet chips, parts of pellet chips, parts of pellets, small pellet particles, pellet dust, and/or agglomerated particles made during or as a result of processing by use, in whole or in part, of the Licensed Technology or any Improvements into a condition suitable for transfer to customers or subsequent users of the iron oxides.

"Improvements" shall mean any enhancement, improvement or modification (whether or not patentable) based on the Licensed Technology or any portion thereof by a Licensee Party, Licensee Parties, or jointly by a Licensee Party with any other person or jointly by Licensee Parties and any one or more other persons.

"Licensed Technology" shall mean all current rights (including intellectual property rights) embodied in, relating to and/or protecting or required to practice one or more aspects of the Magnetation Process™, the Rev3.1 Separator™, the Existing Mag Enhancements, the Licensed Patent Property, the PPAS, and the Process Automation Software, and any rights in the applications included in the Licensed Patent Property or in any patents which may issue pursuant to such applications, whether patented or otherwise, whether documented or oral, and which Licensor, its Affiliates, or any combination of them either own or have the right to license or divulge to the Licensee, including, without limitation, patents, patent applications, patentable inventions, utility models, industrial designs, rights in designs, know-how, copyrights, copyrightable works, copyright registrations, moral rights, topography rights, rights in databases, trade secrets, legally protectable technical information, engineering drawings, specifications, Confidential Information and any other intellectual property or proprietary rights eligible for protection under the laws of any country, state, or jurisdiction, in all cases whether or not registered or registerable and including registrations and applications for registrations of any of these and rights to apply for the same and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these anywhere in the world. The foregoing shall not include any trademarks, service marks, trade dress, trade names, corporate names, domain names, uniform resource locators (urls), internet addresses, or applications for any of the

foregoing items set forth in this sentence. The term "Know-How" for purposes of this definition means any knowledge or information of how to do something that is legally protectable in one or more states of the United States of America.

"Licensed Patent Property" shall mean all of the technology described in the following U.S. patents and U.S. patent applications:

U.S. Patent No. 7,886,913, issued February 15, 2011, entitled "Process, Method and System for Recovering Weakly Magnetic Particles."

U.S. Patent No. 8,292,084, issued October 23, 2012, entitled "Magnetic Separator."

U.S. Patent No. 8,777,015, issued July 15, 2014, entitled "Magnetic Separator."

U.S. Patent No. 8,708,152, issued April 29, 2014, entitled "Iron Ore Separation Device."

U.S. Provisional Patent Application No. 62/251,335, filed November 5, 2015, entitled "Methods, Systems and Processes for Improving Binder Performance and Flux Pellet Properties."

U.S. Provisional Patent Application No. 62/250,455, filed November 3, 2015, entitled "Methods, Devices, Systems and Processes for Upgrading Iron Oxide Concentrates Using Reverse Flotation of Silica at a Natural pH."

"Licensee Party" shall have the meaning ascribed to it in Section 6.1 of the Agreement.

"Licensor Party" shall have the meaning ascribed to it in Section 6.2 of the Agreement.

"Mag Filtration Circuit™" shall mean a conventional vacuum filtration circuit that includes disk filters such as the Northstar Vacuum Disk Filter produced by Superior Industrial Products, Inc. together with slurry percent solids adjustment by a thickener and slurry tank and which further includes a proprietary feature where the filter cake of Concentrate produced by such circuit is further treated by the addition of an anti-freeze agent to prevent freezing while subsequently stored, stockpiled, or Shipped, which is particularly useful when the filter cake is transshipped by railroad cars from the Concentrate production plant to the Pellet Plant.

"Mag Fluxed Pellet Quality Optimization Process and Methodology™" shall mean the methods, devices, systems and processes developed by MagInc for optimizing fluxed pellet physical and metallurgical properties while minimizing costs and maximizing productivity of the iron oxide beneficiation and pelletizing operation, including, but not limited to, any one or any combination of two or more of the following: (a) optimizing the recovery of the goethite mineral versus the hematite mineral species in the Concentrate such that when ground to an optimal aggregate particle size and indurated with internal fuels, the resulting loss on ignition favorably affects pellet properties, (b) using an optimal amount of carbonaceous internal fuels (such as coke breeze or anthracite) (c) using an optimal amount of exothermic ferrous iron obtained by

addition of an optimized dosage of mill scale and/or magnetite, (d) adding an organic based binder early in the process sequence (such as, for example, immediately after filtering) to maximize reaction time with the moist concentrate, such that the non-mineral type binder effectively functions as a balling binder but yet burns away during induration thus creating added pellet porosity, (e) the addition of pneumatically transported baghouse fugitives, collected post induration, such that the pelletizing operation yield is maximized without contamination of the process water with problematic ionic species. Utilization of one or more of these methods, devices, systems and processes results in system optimization that produces a variety of advantageous results, including, for example, one or more of optimized pellet porosity, degree of sintering and mineral species that yield a unique blend of higher than normal pellet reducibility, low temperature degradation, cold compression strength and tumble index.

"Magnetation Process™" shall mean a process for treating mineral assemblages obtained from stockpiled minerals impoundment basins, stockpiled mineral piles, stockpiled lean ore piles, or in-ground deposits using a set of unit process steps to size, clean, liberate, sort, and otherwise prepare for treatment a slurry containing iron oxides and non-magnetic materials and further concentrate the iron oxide portion of the mineral assemblages by feeding such mineral assemblages through a Rev3.1™ Separator to thereby produce a Concentrate.

"Natural Metric Tonne" or "NMT" shall mean a unit of mass containing 2,204.6 pounds in weight including the moisture content that the material naturally occurring at the time it is weighed. This is sometimes also referred to as the wet weight.

"Natural pH Flotation Process™" shall mean the methods, devices, systems, processes and technology as described in U.S. Patent Application No. 62/250,455, filed November 3, 2015, entitled "Methods, Devices, Systems and Processes for Upgrading Iron Oxide Concentrates Using Reverse Flotation of Silica at a Natural pH".

"New IP" shall mean the PPAS and the Existing Mag Process Enhancements.

"Original PAS" shall mean that portion of the PAS originally developed and installed as part of the basic flow sheet that included just the Magnetation Process™.

"Party" and "Parties" shall mean Licensor or Licensee, and Licensor and Licensee, respectively.

"Pellet Plant" shall mean the plant, property and equipment located in White County of Indiana owned by Licensee or its controlled Affiliates and comprising operations including but not limited to train unloading, material handling, grinding, filtering, mixing, pelletizing and support operations for the purpose of making Fired Pellets.

"Pellet Plant Automation Software" or "PPAS" shall mean that subset of Process Automation Software tailor made for controlling, optimizing, visualizing, trouble shooting, and automating the Pellet Plant.

"Process Automation Software" or "PAS" shall mean the customized applications of Commercial Off-The-Shelf (COTS) products (including but not limited to Programmable Logic Controller (PLC) program(s), Human Machine Interface (HMI) application(s), process monitoring trend charts, process displays, associated network(s) configuration, and associated server / client computer configurations), developed by Licensor and periodically upgraded for the primary purpose of automation, control, trouble shooting, process optimization, and visualization of the Magnetation Process™, the Rev 3.1 Separator™, the WHIMS Cobber Circuit™, the WHIMS Scavenger Circuit™, the Natural pH Flotation Process™, the New IP and incorporation into the Licensed Technology for use in the operations of the Facilities.

"Process for Improving Binder Performance and Flux Pellet Properties™" shall mean the process and technology as described in U.S. Patent Application, No. 62/251,335, filed November 5, 2015.

"Rev3.1™ Separator" shall mean certain proprietary equipment designed and developed by Licensor to separate weakly magnetic particles from waste minerals through the use of permanent magnets and other proprietary features, as described in the U.S. Patent No. 8,777,015 and U.S. Patent No. 8,708,152.

"Sale Order" means the "Sale Order" as defined in the Purchase Agreement.

"Ship", "Shipped" and "Shipment" shall mean (i) when used with reference to Concentrate or Fired Pellets produced at the Facilities, the removal of such Concentrate or Fired Pellets from the Facilities for any purpose other than stockpiling; and (ii) when used with reference to stockpiled Concentrate or Fired Pellets, the removal of such Concentrate or Fired Pellets from the land upon which it is stockpiled for any purpose other than re-stockpiling. If Licensee or Licensee's Affiliate converts such Concentrate or Fired Pellets to a higher value product including, but not limited to, reduced iron, pig iron, direct reduced iron ("DRI"), steel, or pellets, whether at the Facilities or elsewhere ("**Conversion**"), then, if not already deemed Shipped pursuant to clause (i) or clause (ii) above, such Concentrate shall be considered Shipped under this Agreement at the time of Conversion.

"WHIMS" shall mean a wet high intensity electro-magnetic separator such as those known as, made, or distributed by Eriez Magnetics, SL-ON, or Longi Magnet Company.

"WHIMS Cobber Circuit™" shall mean a mineral processing circuit embodying intellectual properties (including related Process Automation Software) developed by Licensor including but not limited to the use of one or more WHIMS to make a first stage of magnetic separation of weakly magnetic iron oxides (hematite/goethite/limonite) from non-magnetic silica in a water-based slurry of mineral assemblages mined from tailings basins or virgin iron ore deposits, after size reduction of such mineral assemblages to particles with long dimensions of less than 0.25 inches.

"WHIMS Scavenger Circuit™" shall mean a mineral processing circuit embodying intellectual properties (including related Process Automation Software) developed by Licensor including but not limited to the use of one or more WHIMS and grinding mills including for

example a tower mill or a conventional ball mill, to liberate and recover iron oxides from the reject materials of one or more primary separation circuits, such as for example, but not limited to, primary separation circuits using Rev3.1 Separators™, medium intensity wet drum magnetic separators, separators known as Humphrey Spirals, high frequency fine screens such as the Derrick brand screens, centrifuge separators, jigs, jig tables, heavy media cyclones, or other separators that function by use of density or specific gravity differences between save and reject minerals.

EXHIBIT B

Mag Entities Support Agreement

Execution Version

SUPPORT AGREEMENT

SUPPORT AGREEMENT (this "**Agreement**"), dated as of December 6, 2016 (the "**Effective Date**"), by and among MG Initial Purchaser, LLC, a Delaware limited liability company ("**Initial Buyer**"), ERP Iron Ore, LLC, a Virginia limited liability company ("**ERP Iron Ore**"), Magnetation, Inc., a Minnesota corporation ("**Mag Inc.**"), and Mag Global, LLC, a Delaware limited liability company ("**Mag Global**", together with Mag Inc., the **"Mag Entities"**). Initial Buyer, ERP Iron Ore, and the Mag Entities are referred to herein collectively as the "**Parties,**" and each of them is referred to herein individually as a "**Party**".

W I T N E S S E T H :

WHEREAS, on May 5, 2015, Magnetation LLC, a Delaware limited liability company (the "**Company**"), Mag Lands, LLC, a Delaware limited liability company ("**Mag Lands**"), Mag Finance Corp., a Minnesota corporation ("**Mag Finance**"), Mag Mining, LLC, a Delaware limited liability company ("**Mag Mining**") and Mag Pellet LLC, a Indiana limited liability company ("**Mag Pellet**" and together with the Company, Mag Lands, Mag Finance and Mag Mining, the "**Debtors**") commenced bankruptcy proceedings under chapter 11 of the Bankruptcy Code (the "**Bankruptcy Cases**") in the Bankruptcy Court for the District of Minnesota (the "**Bankruptcy Court**"). The Bankruptcy Cases are jointly administered under the caption *In re Magnetation LLC, et al.*, 15-50307 (GFK) (Bankr. D. Minn.);

WHEREAS, as authorized by the Bankruptcy Court, the Debtors have entered into a Global Settlement Agreement, dated as of August 26, 2016, among the Debtors, AK Steel Corporation, Mag Inc., and JPMorgan Chase Bank, N.A., as administrative agent, Associated Bank, N.A. and BMO Harris Bank N.A. (as amended through the date hereof, the "**Settlement Agreement**"), pursuant to which, among other things, the Debtors are required to pay and have paid approximately one million dollars ($1,000,000) to Mag Global in full and final satisfaction of all requests for indemnification from the Debtors by Mag Inc. or Mag Global with respect to the action entitled *Joseph Abeyta, et al. v. Matthew Lehtinen and Larry Lehtinen*, No. 16-CV-537 (JNE/LIB), in the United States District Court for the District of Minnesota;

WHEREAS, Initial Buyer, the Debtors and ERP Iron Ore desire to enter into an Asset Purchase Agreement, substantially in the form attached hereto as Exhibit A (the "**APA**"; capitalized terms used herein without definition shall have the meanings ascribed to such terms in the APA), pursuant to which the Debtors shall agree to sell the Purchased Assets to ERP Iron Ore, and ERP Iron Ore shall agree to assume the Assumed Liabilities, in each case pursuant to the terms and conditions of the APA;

WHEREAS, pursuant to the APA, ERP Iron Ore shall assume certain of Initial Buyer's rights and obligations thereunder;

WHEREAS, as a condition to the willingness of Initial Buyer and ERP Iron Ore to enter into the APA, the Parties desire to enter into this Agreement, pursuant to which the Mag Entities shall effectuate certain other transactions relating to the wind-down of the Company and the transfer of certain assets, upon the terms and subject to the conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1
DEFINITIONS

Section 1.01. Definitions. Each of the following terms is defined in the Section set forth opposite such term:

Term	**Section**
Agreement	Preamble
APA	Recitals
Bankruptcy Cases	Recitals
Bankruptcy Court	Recitals
Company	Preamble
Debtors	Preamble
e-mail	Section 6.01
Effective Date	Preamble
ERP Iron Ore	Preamble
Initial Buyer	Preamble
Mag Finance	Preamble
Mag Global	Preamble
Mag Inc.	Preamble
Mag Lands	Preamble
Mag Mining	Preamble
Mag Pellet	Preamble
Mag Entities	Recitals
Party	Preamble
Settlement Agreement	Recitals

Section 1.02. Other Definitional and Interpretative Provisions. The words "hereof", "herein" and "hereunder" and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof. References to Articles, Sections, Exhibits and Schedules are to Articles, Sections, Exhibits and Schedules of this Agreement unless otherwise specified. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Exhibit or Schedule but not otherwise defined therein, shall have the meaning as defined in this Agreement. Any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular. Whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation", whether or not they are in fact followed by those words or words of like import. "Writing", "written" and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form. References to any statute shall be deemed to refer to such statute as

amended from time to time and to any rules or regulations promulgated thereunder. References to any agreement or contract are to that agreement or contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof. References to any Person include the successors and permitted assigns of that Person. References from or through any date mean, unless otherwise specified, from and including or through and including, respectively. References to "law", "laws" or to a particular statute or law shall be deemed also to include any and all Applicable Law.

ARTICLE 2
SUPPORT TRANSACTIONS

Section 2.01. Note Cancellation. In consideration of the transactions specified in Section 2.02, and subject to the terms and conditions hereof, ERP Iron Ore shall immediately following the Closing, (i) cancel the Intercompany Note (which shall be a Purchased Asset under the APA) and (ii) deliver to the Mag Entities evidence of such cancellation in the form of a note cancellation and release agreement, substantially in the form attached hereto as Exhibit B (the "**Note Cancellation Agreement**");

Section 2.02. Actions by Mag Entities. In consideration of the transactions specified in Section 2.01, and subject to the terms and conditions hereof, the Mag Entities shall complete (or cause to be completed) the following transactions:

(a) Mag Inc. hereby waives, on behalf of itself and its Affiliates (other than the Debtors, to the extent that any of them are Affiliates of Mag Inc.), effective as of the Closing, for the sole purpose of allowing Mag Inc.'s directors, officers, employees (including employees who also serve as officers of Mag Inc.), independent contractors, or other individuals acting or who acted on Mag Inc.'s or the Debtors' behalf to be employed by ERP Iron Ore after the Closing, any and all non-compete covenants between any such person and Mag Inc. or its Affiliates (other than the Debtors, to the extent that any of them are Affiliates of Mag Inc.), which will allow ERP Iron Ore to directly employ any such person post-Closing (and during the wind-down process if necessary); provided, that no such waiver shall limit or waive the applicability of any other agreements or obligations of such person to Mag Inc. or its Affiliates (other than the Debtors, to the extent that any of them are Affiliates of Mag Inc.), including without limitation, any intellectual property, non-disclosure or confidentiality agreements, nor shall such waiver extend to any employment, services or other actions of or by such persons to or for the benefit of any other employer; provided, further, that this waiver shall permit the full-time employment of any such individual by ERP Iron Ore;

(b) Intentionally Omitted; and

(c) Prior to the execution of the APA, the Company and Mag Inc. shall enter into a restatement and amendment to the Technology License Agreement, substantially in the form of Exhibit A to the APA and effective as of the entry of the Sale Order, pursuant to which, among other things, Mag Inc. shall grant to the Company (and its successors under the APA) a non-exclusive, non-sublicensable, perpetual, royalty-free (other than with respect to certain pass-through royalties as described therein) license for all the Licensed Technology.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES OF THE MAG ENTITIES

Each Mag Entity represents and warrants, on a joint and several basis with each other Mag Entity, to Initial Buyer and ERP Iron Ore, as of the date of this Agreement and as of the closing of each and every transaction contemplated in Article 2, that:

Section 3.01. Corporate Authorization. Subject to the entry of the Sale Order, the execution, delivery and performance by such entity of this Agreement and the consummation of the transactions contemplated hereby are within such Mag Entity's corporate or limited liability company, as applicable, powers and have been duly authorized by all necessary corporate or limited liability company, as applicable, action on the part of such entity. Subject to the entry of the Sale Order, this Agreement constitutes the valid and binding obligations of such Mag Entity enforceable against such entity in accordance with their terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application affecting enforcement of creditors' rights and general principles of equity that restrict the availability of equitable remedies.

Section 3.02. Governmental Authorization. The execution, delivery and performance by such Mag Entity of this Agreement and the consummation of the transactions contemplated hereby require no filing, application or registration with, or consent, authorization or approval of or other action by or in respect of, any Governmental Authority other than the entry of the Sale Order by the Bankruptcy Court.

Section 3.03. Noncontravention. After giving effect to the Sale Order, the execution, delivery and performance by such entity of this Agreement and the consummation of the transactions contemplated hereby do not and will not (i) conflict with or violate any terms, conditions or provisions in the certificate of incorporation, certificate of formation, bylaws or limited liability company operating agreement (or comparable organizational documents), as applicable, of such Mag Entity, (ii) conflict with or violate any term or provision of Applicable Law, or (iii) require any consent or other action by any Person who is not a Party to this Agreement.

Section 3.04. Litigation. As of the date hereof, no material litigation, action or proceeding by or against such Mag Entity is pending, or to the knowledge of such entity, threatened in writing, which would affect the legality, validity or enforceability of this Agreement or the consummation of the transactions contemplated hereby.

Section 3.05. Intellectual Property. There is no Action pending against such Mag Entity alleging that such Mag Entity has infringed, misappropriated or otherwise violated any Intellectual Property Right of any Person. To the knowledge of such Mag Entity, the conduct of its business does not infringe, misappropriate, misuse or otherwise violate the Intellectual Property Rights of any Person and no claims, proceedings or legal actions currently outstanding relate to allegations that the conduct of the business of such Mag Entity, infringes, misappropriates, misuses or otherwise violates any Person's Intellectual Property Rights. To the knowledge of such Mag Entity, it has not received in the last five (5) years any written notice, or to the knowledge of such Mag Entity, become aware that any Person is infringing upon the rights

of it in, or misappropriating the subject matter of, any Intellectual Property Rights in any material respect.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF INITIAL BUYER AND ERP IRON ORE

Initial Buyer and ERP Iron Ore represents and warrants, severally as to itself, and not on a joint and several basis, to the Mag Entities, as of the date of this Agreement and as of the closing of each and every transaction contemplated in Article 2, that:

Section 4.01. Corporate Authorization. Subject to the entry of the Sale Order, the execution, delivery and performance by Initial Buyer or ERP Iron Ore of this Agreement and the consummation of the transactions contemplated hereby are within Initial Buyer's or ERP Iron Ore's corporate or limited liability company, as applicable, powers and have been duly authorized by all necessary corporate or limited liability company, as applicable, action on the part of Initial Buyer or ERP Iron Ore. Subject to the entry of the Sale Order, this Agreement constitutes the valid and binding obligations of Initial Buyer or ERP Iron Ore enforceable against Initial Buyer or ERP Iron Ore in accordance with their terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application affecting enforcement of creditors' rights and general principles of equity that restrict the availability of equitable remedies.

Section 4.02. Governmental Authorization. The execution, delivery and performance by Initial Buyer or ERP Iron Ore of this Agreement and the consummation of the transactions contemplated hereby require no filing, application or registration with, or consent, authorization or approval of or other action by or in respect of, any Governmental Authority other than those contemplated in the APA and the entry of the Sale Order by the Bankruptcy Court.

Section 4.03. Noncontravention. After giving effect to the Sale Order, the execution, delivery and performance by Initial Buyer or ERP Iron Ore of this Agreement and the consummation of the transactions contemplated hereby do not and will not (i) conflict with or violate any terms, conditions or provisions in the certificate of incorporation, certificate of formation, bylaws or limited liability company operating agreement (or comparable organizational documents), as applicable, of Initial Buyer or ERP Iron Ore, (ii) conflict with or violate any term or provision of Applicable Law, or (iii) require any consent or other action by any Person who is not a Party to this Agreement.

Section 4.04. Litigation. As of the date hereof, no material litigation, action or proceeding by or against Initial Buyer or ERP Iron Ore is pending, or to the knowledge of Initial Buyer or ERP Iron Ore, threatened in writing, which would affect the legality, validity or enforceability of this Agreement or the consummation of the transaction contemplated hereby.

ARTICLE 5

Covenants of the Mag Entities

Section 5.01. No Hindrance. The Mag Entities shall not hinder, delay, impede, or impair the Bankruptcy Court's approval, or the consummation, of the transactions contemplated

by the APA; provided that this Section 5.01 shall not impair or be construed to impair (x) the Mag Entities' contractual rights under this Agreement, and/or (y) either of the Mag Entities asserting any rights or defenses under this Agreement, the Note Cancellation Agreement, the Restated and Amended Trademark License Agreement, the Management Services Agreement, the Sale Order, or any other order of the Bankruptcy Court in the Bankruptcy Cases (provided that in connection with any such assertions, the applicable Mag Entity will consult with ERP Iron Ore prior thereto and will act in a manner so as to minimize any delay or adverse impact on the Bankruptcy Court's approval, or the consummation as quickly as possible, of the transactions contemplated by the APA).

ARTICLE 6
MISCELLANEOUS

Section 6.01. Notices. All notices, requests and other communications to any Party shall be in writing (including electronic mail ("**e-mail**") transmission, but excluding facsimile transmission) and shall be given,

if to Initial Buyer, to the persons at the addresses provided in Schedule 1 hereto, with a copy to:

Milbank, Tweed, Hadley & McCloy LLP
28 Liberty Street
New York, NY 10005
Attention: Evan Fleck
E-mail: efleck@milbank.com

if to the Mag Inc. or Mag Global, to:

Magnetation, Inc.
102 NE 3rd Street, Suite 120
Grand Rapids, Minnesota 55744
Attention: Larry Lehtinen
E-mail: larry.lehtinen@magnetation.com

with a copy to:

Krieg DeVault LLP
One Indiana Sq., Suite 2800
Indianapolis, Indiana 46204
Attention: Robert A. Greising
E-mail: rgreising@kdlegal.com

if to ERP Iron Ore, to:

ERP Iron Ore, LLC
U.S. 119 S. Shaffer Road
P.O. Box 305

Madison, WV 25130
Attention: Tom Clarke
E-mail: Tom.Clarke@kissito.org

with a copy to:

Dentons US LLP
1221 Avenue of the Americas, Suite 2500
New York, New York 10020
Attention: Oscar Pinkas
E-mail: oscar.pinkas@dentons.com

or such other address as such Party may hereafter specify for the purpose by notice to the other Parties hereto. All notices and other communications given in accordance with the provisions of this Agreement shall be deemed to have been given and received when delivered by hand or transmitted by email, three Business Days after the same are sent by certified or registered mail, postage prepaid, return receipt requested or one Business Day after the same are sent by a reliable overnight courier service, with acknowledgement of receipt.

Section 6.02. Amendments and Waivers. (a) Any provision of this Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by each Party, or 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.

Section 6.03. Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns; *provided,* that no Party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of each other Party.

Section 6.04. Governing Law. This Agreement, and all claims or causes of action based upon, arising out of, or related to this Agreement or the transactions contemplated hereby, shall be governed by and construed in accordance with the law of the State of New York, without regard to the conflicts of law rules of such state to the extent such principles or rules would require or permit the application of laws of another jurisdiction.

Section 6.05. Jurisdiction. To the fullest extent permitted by Applicable Law, the Parties hereto (a) agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought (i) in the Bankruptcy Court, if brought prior to the entry of a final decree closing the Bankruptcy Cases, and (ii) in the United States District Court for the District of Minnesota (or, if such court shall be unavailable, any other court of the State of

Minnesota) (the "**Minnesota Courts**"), if brought after entry of such final decree closing the Bankruptcy Cases, and shall not be brought, in each case, in any other state or federal court in the United States, (b) agree to submit to the exclusive jurisdiction of the Bankruptcy Court or the Minnesota Courts, as applicable, pursuant to the preceding clauses (a)(i) and (a)(ii)(a)(i)(a)(ii), for purposes of all suits, actions or proceedings arising out of, or in connection with this Agreement or the transactions contemplated hereby, and (c) waive and agree not to assert any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court or that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any Party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each Party agrees that service of process on such Party as provided in Section 6.01 shall be deemed effective service of process on such Party.

Section 6.06. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 6.07. Counterparts; Effectiveness; Third Party Beneficiaries. 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 shall have received a counterpart hereof signed by the other Parties. Until and unless each Party has received a counterpart hereof signed by the other Parties, this Agreement shall have no effect and no Party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication). No provision of this Agreement is intended to confer any rights, benefits, remedies, or Liabilities hereunder upon any Person other than the Parties and their respective successors and assigns.

Section 6.08. Entire Agreement. This Agreement and the Note Cancellation Agreement constitute the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, both oral and written, between the Parties with respect to the subject matter of this Agreement.

Section 6.09. Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other Governmental Authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon such a determination, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible. Signatures submitted by .pdf shall be binding.

Section 6.10. Specific Performance. The Parties acknowledge and agree that irreparable damage for which monetary damages, even if available, would not be an adequate remedy,

would occur if the Parties do not perform any provision of this Agreement with the terms hereof, or otherwise breach any such provision, and that the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement or to enforce specifically the performance of the terms and provisions hereof, in addition to any other remedy to which they are entitled at law or in equity. Each Party agrees that it will not oppose the granting of an injunction, specific performance and other equitable relief when expressly available pursuant to the terms of this Agreement on the basis that (i) there is adequate remedy at law or (ii) an award of specific performance is not an appropriate remedy for any reason at law or equity. Any Party seeking an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement shall not be required to provide any bond or other security in connection with any such order or injunction.

Section 6.11. Fair Consideration. The Parties hereby acknowledge and agree that the consideration set forth herein represents fair consideration and reasonably equivalent value for the transactions, covenants, and agreement herein set forth, which consideration was agreed upon as the result of arm's length, good-faith negotiations between the Parties and their respective representatives.

[*Signature Page Follows*]

EXHIBIT A

APA

EXHIBIT B

Note Cancellation and Release Agreement

NOTE CANCELLATION AND RELEASE AGREEMENT

This Note Cancellation and Release Agreement ("Agreement") is entered into as of December [●], 2016, by and among Magnetation, Inc., a Minnesota corporation (the "Corporation"), and ERP Iron Ore, LLC, a Virginia limited liability company (the "Releasor"). Corporation and the Releasor are referred to herein collectively as the "Parties," and each of them is referred to herein individually as a "Party".

RECITALS

WHEREAS, the Releasor is the holder of the Intercompany Note (as defined in the APA) and desires to cancel the Intercompany Note and release the Corporation from any and all liability in connection with the Intercompany Note upon the terms and conditions described herein; and

WHEREAS, the Releasor acknowledges that this Agreement is being executed and delivered as part of the transactions contemplated by that certain Support Agreement (the "Support Agreement") dated as of December 6, 2016, by and among the Corporation, Initial Buyer (as defined in the APA) and the Releasor, among other parties; and that the Corporation and the Releasor expressly relied upon the cancellation and release under this Agreement in consummating the transactions contemplated by the Support Agreement, and would not have consummated such transactions but for the obligation to deliver this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions. The words "hereof", "herein" and "hereunder" and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof. References to Articles, Sections, Exhibits and Schedules are to Articles, Sections, Exhibits and Schedules of this Agreement unless otherwise specified. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used herein or in any Exhibit or Schedule but not otherwise defined herein or therein, shall have the meaning as defined in the Support Agreement. Any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular. Whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation", whether or not they are in fact followed by those words or words of like import. "Writing", "written" and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form. References to any statute shall be deemed to refer to such statute as amended from time to time and to any rules or regulations promulgated thereunder. References to any agreement or contract are to that agreement or contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof. References to any Person include the successors and permitted assigns of that Person. References from or through any date mean, unless otherwise specified, from and including or through and including, respectively. References to

"law", "laws" or to a particular statute or law shall be deemed also to include any and all Applicable Law.

2. Cancellation of the Intercompany Note. Releasor agrees that (i) the Intercompany Note is fully cancelled and released and the Corporation shall have no further obligations under the Intercompany Note, and (ii) it shall deliver (or cause to be delivered) to the Corporation the original of the Intercompany Note marked across its face "CANCELLED" (or if the original cannot be located, a lost note affidavit that the Intercompany Note has been cancelled and released and containing other customary terms and undertakings for lost note/lost stock affidavits), and thereby shall forever discharge the Corporation of any and all of its obligations under such Intercompany Note, including any obligation to pay any unpaid and accrued principal and interest thereunder.

3. Release of Corporation. Releasor, on behalf of itself and each of its respective affiliates and/or heirs, hereby releases and forever discharges the Corporation and the officers, directors, employees, agents, attorneys, accountants, affiliates, successors and assigns of the Corporation (collectively, the "Releasees") from any and all claims, demands, causes of action, obligations (including attorney's fees and court costs), debts and liabilities, whether known or unknown, suspected or unsuspected, matured or unmatured, both at law (including federal and state securities laws) and in equity, which the Releasor or any of its respective affiliates and/or heirs now have, or have ever had against the Releasees arising contemporaneously with or prior to the date of this Agreement, as to each of the foregoing, solely for payment of the Intercompany Note being cancelled hereunder. Releasor hereby irrevocably covenants to refrain from, directly or indirectly, asserting any claim or demand, or commencing, instituting or causing to be commenced, any proceeding of any kind against any Releasee, as to each of the foregoing, solely for payment of the Intercompany Note being cancelled hereunder.

4. Representations of Releasor. The Releasor represents that (i) it is the sole holder and owner of the Intercompany Note, pursuant to the Sale Order (as defined in the APA) entered approving, and that certain Asset Purchase Agreement dated as of December 6, 2016 by and between [ ] (the "APA"), (ii) it has full and sufficient authority to enter into this Agreement, and (iii) no other person has any interest of any kind in the Intercompany Note or has any right to consent to or approve the cancellation of the Intercompany Note contemplated herein.

5. Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other Governmental Authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon such a determination, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible. Copies of signatures submitted by .pdf shall be binding.

6. Amendments and Waivers. (a) Any provision of this Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by each Party, or 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.

7. Entire Agreement. This Agreement and each of the agreements referenced herein constitute the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, both oral and written, between the Parties with respect to the subject matter of this Agreement.

8. Notices. All notices, requests and other communications to any Party shall be in writing (including facsimile transmission and electronic mail ("e-mail") transmission) and shall be given to the Parties and in the manner set forth in Section 6.01 of the Support Agreement.

9. Governing Law. This Agreement, and all claims or causes of action based upon, arising out of, or related to this Agreement or the transactions contemplated hereby, shall be governed by and construed in accordance with the law of the State of New York, without regard to the conflicts of law rules of such state to the extent such principles or rules would require or permit the application of laws of another jurisdiction.

10. Jurisdiction. To the fullest extent permitted by law, the Parties hereto (a) agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought (i) in the Bankruptcy Court, if brought prior to the entry of a final decree closing the Bankruptcy Cases, and (ii) in the United States District Court for the District of Minnesota (or, if such court shall be unavailable, any other court of the State of Minnesota) (the "Minnesota Courts"), if brought after entry of such final decree closing the Bankruptcy Cases, and shall not be brought, in each case, in any other state or federal court in the United States, (b) agree to submit to the exclusive jurisdiction of the Bankruptcy Court or the Minnesota Courts, as applicable, pursuant to the preceding clauses (a)(i) and (a)(ii), for purposes of all suits, actions or proceedings arising out of, or in connection with this Agreement or the transactions contemplated hereby, and (c) waive and agree not to assert any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in any such court or that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any Party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each Party agrees that service of process on such Party as provided in Section 6.01 of the Support Agreement shall be deemed effective service of process on such Party.

11. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL

PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

12. Counterparts; Effectiveness; Third Party Beneficiaries. 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. Facsimile execution and delivery of this Agreement is legal, valid and binding for all purposes. This Agreement shall be valid and binding when fully executed. No provision of this Agreement is intended to confer any rights, benefits, remedies, or liabilities hereunder upon any person other than the Parties and their respective successors and permitted assigns.

13. Specific Performance. The Parties acknowledge and agree that irreparable damage for which monetary damages, even if available, would not be an adequate remedy, would occur if the Parties do not perform any provision of this Agreement with the terms hereof, or otherwise breach any such provision, and that the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement or to enforce specifically the performance of the terms and provisions hereof, in addition to any other remedy to which they are entitled at law or in equity. Each Party agrees that it will not oppose the granting of an injunction, specific performance and other equitable relief when expressly available pursuant to the terms of this Agreement on the basis that (i) there is adequate remedy at law or (ii) an award of specific performance is not an appropriate remedy for any reason at law or equity. Any Party seeking an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement shall not be required to provide any bond or other security in connection with any such order or injunction.

14. Fair Consideration. The Parties hereby acknowledge and agree that the consideration set forth herein represents fair consideration and reasonably equivalent value for the transactions, covenants, and agreement herein set forth, which consideration was agreed upon as the result of arm's length, good-faith negotiations between the Parties and their respective representatives.

[*Signature Page Follows*]

[*Signature Page to Intercompany Note Cancellation and Release Agreement*]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

"Releasor"

ERP IRON ORE, LLC

By: _____
Name:
Title:

"Corporation"

MAGNETATION, INC.

By: _____
Name:
Title:

Magnetation LLC joins in this Agreement for the sole purpose of confirming that it has transferred all of its rights, title and interest in the Intercompany Note to the Releasor and no longer has any rights, title or interest therein or claims thereunder (and disclaims all such rights).

MAGNETATION LLC

By: _____
Name:
Title:

EXHIBIT C

Form of Contracts Assignment and Assumption Agreements

Form of Contract Assignment and Assumption Agreement

THIS CONTRACT ASSIGNMENT AND ASSUMPTION AGREEMENT, dated as of December [●], 2016 (this "**Assignment**"), is made and entered into by and among Magnetation LLC, a Delaware limited liability company (the "**Company**"), the Subsidiaries of the Company set forth on Schedule A of the Asset Purchase Agreement (together with the Company, the "**Sellers**") and ERP Iron Ore, LLC, a Virginia limited liability company ("**Buyer**"). Sellers and Buyer are referred to herein individually as a "**Party**" and collectively as the "**Parties**".

WHEREAS, Buyer and the Sellers have concurrently herewith consummated the purchase by Buyer of the Purchased Assets pursuant to the terms and conditions of the Asset Purchase Agreement dated December 6, 2016 by and among MG Initial Purchaser, LLC, Buyer and the Sellers, (the "**Asset Purchase Agreement**"; terms defined in the Asset Purchase Agreement and not otherwise defined herein being used herein as therein defined);

WHEREAS, this Assignment is being entered into to effect the transactions contemplated by the Asset Purchase Agreement as approved by the Sale Order; and

WHEREAS, pursuant to the Sale Order and the Asset Purchase Agreement, Sellers wish to assign and Buyer wishes to assume, the contracts set forth on Schedule A hereto (such contracts, the "**Assigned Contracts**").

NOW, THEREFORE, in consideration of the sale of the Purchased Assets and in accordance with the terms of the Asset Purchase Agreement and the Sale Order, Buyer and the Sellers agree as follows:

1) Assignment and Assumption. Sellers hereby assign, transfer, convey, and deliver to Buyer all of Sellers' rights, titles and interests in, to and under each of the Assigned Contracts, together with all rights and benefits thereto, free and clear of any and all Encumbrances of any kind or nature whatsoever, other than Permitted Encumbrances in subsections (i), (ii), (iv) and (v) of that defined term in the Asset Purchase Agreement, pursuant to the Sale Order, and Buyer hereby (a) accepts the conveyance, transfer, assignment and delivery of Sellers' rights, titles and interests in, to and under the Assigned Contracts and (b) assumes and agrees to perform all of Sellers' obligations and liabilities under the Assigned Contracts first arising from and after the Closing Date (and for the avoidance of doubt, other than any Liability arising out of or related to any breach, default (whether monetary or non-monetary), act or omission that occurred on or prior to the Closing other than Cure Costs), in each case in accordance with and subject to the terms and conditions of the Asset Purchase Agreement.

2) Conflict. The assignment and assumption of the Assigned Contracts (and such obligations thereunder) made hereunder are made in accordance with and subject to the Asset Purchase Agreement (including, without limitation, the representations, warranties, covenants, and agreements contained therein), which is incorporated herein by reference. In the event of a conflict between the terms and conditions of this Assignment and the terms and conditions of the Asset Purchase Agreement, the terms and conditions of the Asset Purchase Agreement shall govern, supersede, and prevail. Notwithstanding

anything to the contrary in this Assignment, nothing herein is intended to, nor shall it, extend, amplify, or otherwise alter the representations, warranties, covenants, and obligations of the Parties contained in the Asset Purchase Agreement or the survival thereof.

3) Notices. Any notice, request, or other document to be given hereunder to any Party shall be given in the manner specified in Section 12.01 of the Asset Purchase Agreement. Any Party may change its address for receiving notices, requests, and other documents by giving written notice of such change to the other Parties in the manner specified in Section 12.01 of the Asset Purchase Agreement.

4) Severability. Whenever possible, each provision of this Assignment shall be interpreted in such manner as to be effective and valid under Applicable Law, but if any provision of this Assignment is held to be prohibited by or invalid under Applicable Law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Assignment.

5) Enforceability. If any provision of this Assignment or the application of any such provision to any Person or circumstance shall be held invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other provision hereof.

6) Amendments. This Assignment may not be amended or modified except by an instrument in writing signed by, or on behalf of, the Parties.

7) Further Assurances. Each of the Parties, without additional consideration, shall execute and deliver all such further documents and do such other things as the other Party may reasonably request to give full effect to this Assignment.

8) Counterparts; Facsimile and Electronic Signatures. This Assignment may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. This Assignment or any counterpart may be executed and delivered by facsimile copies or delivered by electronic communications by portable document format (.pdf), each of which shall be deemed an original.

9) Governing Law. This Assignment shall be governed by and construed in accordance with the internal laws of the State of New York (without giving effect to the principles of conflicts of laws thereof), except to the extent that the laws of such state are superseded by the Bankruptcy Code.

10) Third Party Beneficiaries and Obligations. This Assignment shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Nothing in this Assignment, express or implied, is intended to or shall confer upon any Person other than the Parties or their respective successors and permitted assigns, any rights, remedies, or liabilities under or by reason of this Assignment.

11) Entire Agreement. This Assignment, together with the Schedules attached hereto and the Asset Purchase Agreement and the exhibits and the documents referred to in the Asset Purchase Agreement, contain the entire understanding between the Parties with respect to the transactions contemplated hereby and supersede all prior agreements, understandings, representations, and statements, oral or written, among the Parties on the subject matter hereof, which such prior agreements, understandings, representations, and statements, oral or written, shall be of no further force or effect.

[*signature pages to follow*]

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

MAGNETATION LLC

By: _____

Name:
Title:

SUBSIDIARIES OF MAGNETATION LLC

MAG LANDS, LLC

By: _____

Name:
Title:

MAG FINANCE CORP.

By: _____

Name:
Title:

MAG MINING, LLC

By: _____

Name:
Title:

MAG PELLET LLC

By: _____

Name:
Title:

ERP IRON ORE, LLC

By: _____

Name:
Title:

Schedule A

Assigned Contracts

EXHIBIT D

FORM OF GENERAL ASSIGNMENT AND BILL OF SALE

This GENERAL ASSIGNMENT AND BILL OF SALE, dated as of December [●], 2016 (this "**Bill of Sale**"), is made and entered into by and among Magnetation LLC, a Delaware limited liability company (the "**Company**"), the Subsidiaries of the Company set forth on Schedule A of the Asset Purchase Agreement (collectively, the "**Company Subsidiaries**", and together with the Company, the "**Sellers**") and ERP Iron Ore, LLC, a Virginia limited liability company ("**Buyer**").

W I T N E S S E T H :

WHEREAS, Buyer and the Sellers have concurrently herewith consummated the purchase by Buyer of the Purchased Assets pursuant to the terms and conditions of the Asset Purchase Agreement dated December [●], 2016 by and among Buyer and the Sellers, (the "**Asset Purchase Agreement**"; terms defined in the Asset Purchase Agreement and not otherwise defined herein being used herein as therein defined);

WHEREAS, this Bill of Sale is being entered into to effect the transactions contemplated by the Asset Purchase Agreement;

NOW, THEREFORE, in consideration of the sale of the Purchased Assets and in accordance with the terms of the Asset Purchase Agreement, Buyer and the Sellers agree as follows:

1. (a) The Sellers do hereby grant, convey, sell, transfer, assign and deliver to Buyer all of the right, title and interest of the Sellers in, to and under the Purchased Assets (other than those Purchased Assets transferred pursuant to other Transaction Documents) free and clear of any and all Encumbrances of any kind or nature whatsoever, other than Permitted Encumbrances in subsections (i), (ii), (iv) and (v) of that defined term in the Asset Purchase Agreement, pursuant to the Sale Order, including without limitation, the Purchased Assets described on Exhibit A attached hereto and incorporated herein by reference.

2. This Bill of Sale is subject to all the surviving terms and provisions of the Asset Purchase Agreement, including without limitation all surviving representations and warranties. No provision of this Bill of Sale shall be deemed to enlarge, alter or amend the terms or provisions of the Asset Purchase Agreement. Notwithstanding anything to the contrary set forth herein, if there is any conflict between the terms and provisions of this Bill of Sale and the terms and provisions of the Asset Purchase Agreement, the terms and provisions of the Asset Purchase Agreement shall control.

3. This Bill of Sale shall be governed by and construed in accordance with the law of the State of New York, without regard to the conflicts of law rules of such state.

4. This Bill of Sale may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

5. Each of Buyer and Sellers hereto agree, upon the reasonable request of the other (and at such other party's expense), to make, execute and deliver any and all documents or instruments of any kind or character, and to perform all such other actions, that may be reasonably necessary or proper to effectuate, confirm, perform or carry out the terms or provisions of this Bill of Sale.

IN WITNESS WHEREOF, the Buyer and Sellers hereto have caused this Bill of Sale to be duly executed as of the day and year first above written.

MAGNETATION LLC

By: _____
Name:
Title:

MAG LANDS, LLC

By: _____
Name:
Title:

MAG FINANCE CORP.

By: _____
Name:
Title:

MAG MINING, LLC

By: _____
Name:
Title:

MAG PELLET LLC

By: _____
Name:
Title:

ERP IRON ORE, LLC

By: _____
Name:
Title:

EXHIBIT E

Form of Lease Assignment and Assumption Agreements

Form of Lease Assignment and Assumption Agreement

THIS LEASE ASSIGNMENT AND ASSUMPTION AGREEMENT, dated as of December [●], 2016 (this "**Assignment**"), is made and entered into by and between [INSERT NAME OF APPLICABLE SELLER], a [JURISDICTION] [ENTITY] ("**Seller**"), and ERP Iron Ore, LLC, a Virginia limited liability company ("**Buyer**"). Seller and Buyer are referred to herein individually as a "**Party**" and collectively as the "**Parties**".

WHEREAS, Buyer and the Seller are parties to that certain Asset Purchase Agreement dated December 6, 2016 by and among MG Initial Purchaser, LLC, Buyer, Magnetation LLC and the Subsidiaries of the Magnetation LLC set forth on Schedule A of the Asset Purchase Agreement, (the "**Asset Purchase Agreement**"; terms defined in the Asset Purchase Agreement and not otherwise defined herein being used herein as therein defined);

WHEREAS, this Assignment is being entered into to effect the transactions contemplated by the Asset Purchase Agreement as approved by the Sale Order; and

WHEREAS, pursuant to the Sale Order and the Asset Purchase Agreement, Seller wishes to assign, transfer, convey, and deliver to Buyer the leases described in Schedule A attached hereto including all amendments, modifications, and supplements thereto (collectively, the "**Leases**"), and Buyer wishes to accept assignments of the Leases together with all rights, titles, and interests of Seller thereunder. The property encumbered by the Leases (the "**Leased Premises**") is described on Schedule B attached hereto.

NOW, THEREFORE, in consideration of the sale of the Purchased Assets and in accordance with the terms of the Asset Purchase Agreement and the Sale Order, Buyer and the Seller agree as follows:

1) Assignment and Assumption of Lease. Seller hereby assigns, transfers, conveys, and delivers to Buyer free and clear of any and all Encumbrances of any kind or nature whatsoever, other than Permitted Encumbrances in subsections (i), (ii), (iv) and (v) of that defined term in the Asset Purchase Agreement, pursuant to the Sale Order all of Seller's estate, right, title and interest described under the Leases, and Buyer hereby accepts the assignment, transfer, conveyance, and delivery of Seller's estate, right, title and interest in, to and under such leasehold estates.

2) Assumption of Assumed Liabilities. Seller hereby assigns, and Buyer hereby assumes and agrees to pay, discharge, or perform when due, all of Seller's obligations under the Leases first arising from and after the Closing Date to the extent provided in the Asset Purchase Agreement (and for the avoidance of doubt, other than any Liability arising out of or related to any breach, default (whether monetary or non-monetary), act or omission that occurred on or prior to the Closing other than Cure Costs).

3) Conflict. The assignment and assumption of the Leases (and the obligations thereunder) made hereunder are made in accordance with and subject to the Asset Purchase Agreement (including, without limitation, the representations, warranties, covenants, and agreements contained therein), which is incorporated herein by reference. In the event of a conflict between the terms and conditions of this Assignment and the terms and

conditions of the Asset Purchase Agreement, the terms and conditions of the Asset Purchase Agreement shall govern, supersede, and prevail. Notwithstanding anything to the contrary in this Assignment, nothing herein is intended to, nor shall it, extend, amplify, or otherwise alter the representations, warranties, covenants, and obligations of the Parties contained in the Asset Purchase Agreement or the survival thereof.

4) Notices. Any notice, request, or other document to be given hereunder to any Party shall be given in the manner specified in Section 12.01 of the Asset Purchase Agreement. Any Party may change its address for receiving notices, requests, and other documents by giving written notice of such change to the other Parties in the manner specified in Section 12.01 of the Asset Purchase Agreement.

5) Severability. Whenever possible, each provision of this Assignment shall be interpreted in such manner as to be effective and valid under Applicable Law, but if any provision of this Assignment is held to be prohibited by or invalid under Applicable Law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Assignment.

6) Enforceability. If any provision of this Assignment or the application of any such provision to any Person or circumstance shall be held invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other provision hereof.

7) Amendments. This Assignment may not be amended or modified except by an instrument in writing signed by, or on behalf of, the Parties.

8) Further Assurances. Each of the Parties, without additional consideration, shall execute and deliver all such further documents and do such other things as the other Party may reasonably request to give full effect to this Assignment, including, without limitation, any other form of assignment agreement required in order to record this Assignment in the appropriate public records of the county in which the Leased Premises is located.

9) Counterparts; Facsimile and Electronic Signatures. This Assignment may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. This Assignment or any counterpart may be executed and delivered by facsimile copies or delivered by electronic communications by portable document format (.pdf), each of which shall be deemed an original.

10) Governing Law. This Assignment shall be governed by and construed in accordance with the internal laws of the State of New York (without giving effect to the principles of conflicts of laws thereof), except to the extent that the laws of such state are superseded by the Bankruptcy Code.

11) Third Party Beneficiaries and Obligations. This Assignment shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Nothing in this Assignment, express or implied, is intended to or shall confer upon any

Person other than the Parties or their respective successors and permitted assigns, any rights, remedies, or liabilities under or by reason of this Assignment.

12) Recordation. Subject to the following two sentences, this Assignment shall be recorded in the appropriate public records of the county in which the Leased Premises is located. Seller makes no representation regarding the recordability of this Assignment, nor the recordability of any Lease or related documents. Seller shall bear no liability for the failure of the Leases or related documents to be recorded.

13) Entire Agreement. This Assignment, together with the Schedules attached hereto and the Asset Purchase Agreement and the exhibits and the documents referred to in the Asset Purchase Agreement, contain the entire understanding between the Parties with respect to the transactions contemplated hereby and supersede all prior agreements, understandings, representations, and statements, oral or written, between the Parties on the subject matter hereof, which such prior agreements, understandings, representations, and statements, oral or written, shall be of no further force or effect.

[*signature pages to follow*]

IN WITNESS WHEREOF, the Parties have executed this Assignment as of the date first above written.

[SELLER]:

By: _____

Name:
Title:

Sworn and subscribed to
before me this ____ day
of _____ 2016.

_____
Name:
A Notary Public of _____
My commission expires _____

ERP IRON ORE, LLC

By: _____

Name:
Title:

Sworn and subscribed to
before me this ____ day
of _____ 2016.

_____
Name:
A Notary Public of _____
My commission expires _____

Schedule A

Leases

[List Lease in the following form:

Lease dated [●], by and between [●], a [●], as landlord, and [●], a [●], as tenant, recorded [●], at Book [●], page [●], in the records of [●] County, [●], [as amended by that certain [●] dated [●].]]

Schedule B

Leased Premises

EXHIBIT F

Form of Sale Order

EXHIBIT G

Form of New Indenture and ERP Notes

Execution Version

FLOATING RATE SENIOR SECURED AMORTIZING PIK TOGGLE NOTES INDENTURE

Dated as of December [•], 2016

Among

ERP Iron Ore, LLC as Issuer,

THE GUARANTORS LISTED ON THE SIGNATURE PAGES HERETO

and

WILMINGTON SAVINGS FUND SOCIETY, FSB,
as Trustee, Collateral Agent, Paying Agent, Registrar and Calculation Agent

FLOATING RATE SENIOR SECURED AMORTIZING PIK TOGGLE NOTES DUE 2019

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INDENTURE, dated as of December [•], 2016, among ERP Iron Ore LLC, a Virginia limited liability company (the "Issuer"), the Guarantors listed on the signature pages hereto and Wilmington Savings Fund Society, FSB, as trustee (the "Trustee"), collateral agent (in such capacity, the "Collateral Agent"), paying agent (in such capacity, the "Paying Agent"), registrar (in such capacity, the "Registrar") and calculation agent (in such capacity, the "Calculation Agent").

W I T N E S S E T H

WHEREAS, on May 5, 2015, Magnetation LLC (the "Debtor Company") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq., in the United States Bankruptcy Court for the District of Minnesota (the "Bankruptcy Court"), and the Debtor Company and the Debtors have continued to operate their businesses and manage their properties as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code;

WHEREAS, by order, dated December [•], 2016 (the "Sale Order"), the Bankruptcy Court approved Initial Buyer's (as defined in the APA) purchase of substantially all of the Debtors' assets free and clear of Liens, claims, encumbrances and interests;

WHEREAS, pursuant to the Sale Order, Initial Buyer designated the Issuer as the purchaser in exchange for the ERP Assumption (as defined in the APA);

WHEREAS, in accordance with the ERP Assumption, the Issuer has duly authorized the creation and issuance at Closing (as defined in the APA) of $22,500,000 aggregate principal amount of Floating Rate Senior Secured Amortizing PIK Toggle Notes due December [•], 2019 (*provided* that the principal amount of the Notes authorized and outstanding may be increased in connection with PIK Interest) (the "Notes"); and

WHEREAS, the Issuer and each of the Guarantors have duly authorized the execution and delivery of this Indenture;

NOW, THEREFORE, the Issuer, the Guarantors, the Trustee and the Collateral Agent agree as follows for the benefit of each other and for the equal and ratable benefit of the Holders of the Notes.

ARTICLE 1

DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.01 Definitions.

"Acquired Indebtedness" means, with respect to any specified Person, (1) Indebtedness of any Person or any of its Subsidiaries existing at the time such Person becomes a Subsidiary, (2) Indebtedness assumed in connection with the acquisition of assets from such Person, or (3) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person, in each case whether or not Incurred by such Person in connection with, or in anticipation or contemplation of, such Person becoming a Subsidiary or such acquisition.

Acquired Indebtedness shall be deemed to have been Incurred, with respect to clause (1) of the preceding sentence, on the date such Person becomes a Subsidiary and, with respect to clauses (2) and (3) of the preceding sentence, on the date of consummation of such acquisition of assets.

"Affiliate" of any specified Person means any other Person, directly or indirectly, controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by" and "under common control with") when used with respect to any Person means possession, directly or indirectly, of the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing, *provided* that exclusively for purposes of Section 4.14, beneficial ownership of 10% or more of the Voting Stock of a Person shall be deemed to be control.

"Agent" means any Collateral Agent, Paying Agent, Registrar or Calculation Agent.

"Amortization Amount" means $2,000,000 or such lesser amount as is due on any Amortization Payment Date.

"Amortization Payment Date" means each of March 31, June 30, September 30 and December 31, of each fiscal year beginning on, and inclusive of, June 30, 2017.

"APA" means that certain asset purchase agreement, dated as of December [•], 2016, by and among MG Initial Purchaser, LLC, a Delaware limited liability company, the Issuer, the Debtor Company and certain of its Subsidiaries.

"Average Life" means, as of the date of determination, with respect to any Indebtedness or Preferred Stock, the quotient obtained by dividing (1) the sum of the products obtained by multiplying (a) the amount of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Preferred Stock by (b) the number of years (calculated to the nearest one-twelfth) from the date of determination to the date of such payment; by (2) the sum of the amounts of all such payments.

"Bankruptcy Code" means Title 11 of the United States Code or any applicable successor statute.

"Bankruptcy Law" means the Bankruptcy Code, as amended, or any similar federal, state or foreign law for the relief of debtors.

"beneficial ownership" has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, and "beneficial owner" has a corresponding meaning.

"Board of Directors" means:

(1) with respect to the Issuer, the board of managers of the Issuer, or in the event the Issuer has no board of managers, the board of directors or managers of the Issuer's managing member;

(2) with respect to a corporation, the board of directors of the corporation;

(3) with respect to a partnership, the board of directors of the general partner of the partnership; and

(4) with respect to any other Person, the board or committee of such Person serving a similar function;

and, in each case, other than for purposes of determining a Change of Control, any duly authorized committee of any such body.

"Business Day" means each day that is not a Saturday, Sunday or other day on which banking institutions in New York, New York are authorized or required by law to close.

"Calculation Agent" means a financial institution appointed by the Issuer to calculate the interest rate payable on the Notes in respect of each Interest Period, which shall initially be the Trustee.

"Calculation Date" means, with respect to any Interest Determination Date, the earlier of (i) the tenth calendar day after such Interest Determination Date, or, if any such day is not a Business Day, the next succeeding Business Day, and (ii) the Business Day immediately preceding the applicable Interest Payment Date or the maturity date, as the case may be.

"Capital Stock" of any Person means any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) equity of such Person, including any Preferred Stock and limited liability or partnership interests (whether general or limited), but excluding any debt securities convertible or exchangeable into such equity.

"Capitalized Lease Obligations" means an obligation that is required to be classified and accounted for as a capitalized lease for financial reporting purposes in accordance with GAAP. The amount of Indebtedness represented by such obligation will be the capitalized amount of such obligation at the time any determination thereof is to be made as determined in accordance with GAAP, and the Stated Maturity thereof will be the date of the last payment of rent or any other amount due under such lease prior to the first date such lease may be terminated without penalty.

"Cash Equivalents" means:

(1) U.S. dollars or, in the case of any Foreign Subsidiary, such local currencies held by it from time to time in the ordinary course of business;

(2) securities issued or directly and fully Guaranteed or insured by the U.S. government or any agency or instrumentality of the United States (*provided* that the full faith and credit of the United States is pledged in support thereof), having maturities of not more than one year from the date of acquisition;

(3) marketable general obligations issued by any state of the United States or any political subdivision of any such state or any public instrumentality thereof maturing within one year from the date of acquisition and, at the time of acquisition, having a credit rating of at least "A" or the equivalent thereof by S&P or Moody's or carrying an equivalent rating by a nationally recognized rating agency, if both of the two named rating agencies cease publishing ratings of investments;

(4) certificates of deposit, time deposits, eurodollar time deposits, overnight bank deposits or bankers' acceptances having maturities of not more than one year from the date of acquisition thereof issued by any commercial bank the long-term debt of which is rated at the time of acquisition thereof at least "A" or the equivalent thereof by S&P or Moody's, or carrying an equivalent rating by a nationally recognized rating agency, if both of the two named rating agencies cease publishing ratings of investments, and having combined capital and surplus in excess of $500.0 million;

(5) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clauses (2), (3) and (4) entered into with any bank meeting the qualifications specified in clause (4) above;

(6) commercial paper rated at the time of acquisition thereof at least "A-2" or the equivalent thereof by S&P or "P-2" or the equivalent thereof by Moody's, or carrying an equivalent rating by a nationally recognized rating agency, if both of the two named rating agencies cease publishing ratings of investments, and in any case maturing within one year after the date of acquisition thereof; and

(7) interests in any investment company or money market fund which invests 95% or more of its assets in instruments of the type specified in clauses (1) through (6) above.

"Cash Interest" means the payment of interest on the Notes in cash equal to the amount of accrued and unpaid interest due on the relevant Interest Payment Date.

"Change of Control" means:

(1) any person or "group" (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act as in effect on the date of the original issuance of the Notes hereunder, but excluding any employee benefit plan of such person and its subsidiaries and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) shall have acquired beneficial ownership (within the meaning of Rules 13d-3 and 13d-5 of the Exchange Act as in effect on the Closing Date) of Equity Interests of the Issuer representing more than 50% of the voting interests represented by the issued and outstanding Equity Interests of the Issuer (determined on a fully diluted basis but not giving effect to contingent voting rights that have not yet vested); or

(2) the merger or consolidation of the Issuer with or into another Person or the merger of another Person with or into the Issuer or the merger of any Person with or into a Subsidiary of the Issuer, unless the holders of a majority of the

aggregate voting power of the Voting Stock of the Issuer, immediately prior to such transaction, hold securities of the surviving or transferee Person that represent, immediately after such transaction, at least a majority of the aggregate voting power of the Voting Stock of the surviving or transferee Person; or

(3) the sale, assignment, conveyance, transfer, lease or other disposition (other than by way of merger or consolidation), in one or a series of transactions, of all or substantially all of the assets of the Issuer and its Subsidiaries taken as a whole to any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act); or

(4) the adoption by the stockholders of the Issuer or any parent entity of a plan or proposal for the liquidation or dissolution of the Issuer or any parent entity.

"Clarke Guarantors" means each of Thomas Matthew Clarke and Ana Mercedes Clarke, each, an individual, and each with an address for mailing c/o ERP Compliant Fuels, LLC at 15 Appledore Lane, Natural Bridge, Virginia 24578, each, an owner of direct and indirect Equity Interests of the Issuer and certain of its affiliates.

"Code" means the Internal Revenue Code of 1986, as amended.

"COKE" means ERP Compliant COKE, LLC, a Delaware limited liability company, and its successors.

"Coke Guarantor" means COKE and any of its Subsidiaries or parents which may at any time Guarantee the Notes and the Issuer's Obligations under each other Notes Document.

"Coke Plant" means (i) the 244-acre parcel of real property located in Birmingham, Alabama on which coke manufacturing facilities, including coke ovens, railyard and water treatment assets, are operated by COKE to produce, among other things, blast furnace coke, foundry coke, and industrial coke, and (ii) all fixtures located on such real property.

"Collateral" means all property and assets whether now owned or hereafter acquired, in which Liens are, from time to time, purported to be granted to secure the Notes, the Note Guarantees and the Issuer's Obligations under each other Notes Document pursuant to the Collateral Documents.

"Collateral Account" means one or more segregated accounts pledged under the Collateral Documents that is under the control of the Collateral Agent and is free from all other Liens, and includes cash and Cash Equivalents received by the Trustee or the Collateral Agent from Recovery Events, foreclosures on or sales of Collateral or any other awards or proceeds pursuant to the Collateral Documents, including earnings, revenues, rents, issues, profits and income from the Collateral received pursuant to the Collateral Documents and interest earned thereon.

"Collateral Documents" means the Mortgages, deeds of trust, deeds to secure debt, security agreements, pledge agreements, hypothecs, collateral agency agreements, collateral assignments, debentures, control agreements and other instruments and documents

executed and delivered pursuant to the Indenture or any of the foregoing (including, without limitation, the financing statements under the Uniform Commercial Code of the relevant state) that create or purport to create a Lien in the Collateral in favor of the Collateral Agent and/or the Trustee (for the benefit of the Holders of Notes and the Trustee in its various capacities) or any notice of such pledge, assignment or grant, in each case as they may be amended, supplemented or otherwise modified from time to time.

"Commodity Agreement" means, with respect to any Person, any commodity future or forward, swap or option, cap or collar or other similar agreement or arrangement as to which such Person is a party or beneficiary.

"Common Stock" means with respect to any Person, any and all shares, interests or other participations in, and other equivalents (however designated and whether voting or nonvoting) of such Person's common equity whether or not outstanding on the Issue Date, and includes, without limitation, all series and classes of such common equity.

"Corporate Trust Office of the Trustee" shall be at the address of the Trustee specified in Section 13.01 or such other address as to which the Trustee may give notice to the Holders and the Issuer.

"Currency Agreement" means, with respect to any Person, any foreign exchange future or forward, swap or option, cap or collar or other similar agreement or arrangement as to which such Person is a party or a beneficiary.

"Custodian" means the Trustee, as custodian with respect to the Notes in global form, or any successor entity thereto.

"Default" means any event that is, or after notice or passage of time or both would be, an Event of Default.

"Definitive Note" means a certificated Note (bearing the Restricted Notes Legend if the transfer of such Note is restricted by applicable law) that does not include the Global Notes Legend.

"Depositary" means, with respect to the Notes issuable or issued in whole or in part in global form, the Person specified in Section 2.03 as the Depositary with respect to the Notes, and any and all successors thereto appointed as Depositary hereunder and having become such pursuant to the applicable provision of this Indenture.

"Disqualified Stock" means, with respect to any Person, any Capital Stock of such Person that by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable) or upon the happening of any event:

(1) matures or is mandatorily redeemable pursuant to a sinking fund obligation or otherwise;

(2) is convertible into or exchangeable for Indebtedness or Capital Stock that satisfies the requirements of clause (1) or (3) hereof (excluding Capital Stock which is

convertible or exchangeable solely at the option of the Issuer or a Subsidiary (it being understood that upon such conversion or exchange it shall be an Incurrence of such Indebtedness or Disqualified Stock)); or

(3) is redeemable at the option of the holder of the Capital Stock in whole or in part,

in each case on or prior to the date 91 days after the earlier of the final maturity date of the Notes or the date the Notes are no longer outstanding; *provided, however*, that only the portion of Capital Stock which so matures or is mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date will be deemed to be Disqualified Stock.

"DTC" means The Depository Trust Company or any successor thereto.

"Equity Interests" means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such equity interest.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

"Fair Market Value" means, with respect to any asset or liability, the fair market value of such asset or liability as determined by Senior Management of the Issuer in good faith; *provided* that, except as otherwise provided in this Indenture, if the fair market value exceeds $2.0 million, such determination shall be made by the Board of Directors of the Issuer or an authorized committee thereof in good faith (including as to the value of all non-cash assets and liabilities).

"FerroMagnetica" means FerroMagnetica, LLC, a Delaware limited liability company and its successors.

"Foreign Subsidiary" means any Subsidiary that is not organized under the laws of the United States or any state thereof or the District of Columbia.

"GAAP" means generally accepted accounting principles in the United States as in effect as of the Issue Date, including those set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as approved by a significant segment of the accounting profession. Unless otherwise specified, all ratios and computations contained in this Indenture shall be computed in conformity with GAAP, except that in the event the Issuer is acquired in a transaction that is accounted for using purchase accounting, the effects of the application of purchase accounting shall be disregarded in the calculation of such ratios and other computations contained in this Indenture.

"Governmental Authority" means any nation or government, any state or other

political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

"Government Securities" means securities that are (1) direct obligations of the United States for the timely payment of which its full faith and credit is pledged or (2) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States the timely payment of which is unconditionally Guaranteed as a full faith and credit obligation of the United States, which, in either case, are not callable or redeemable at the option of the issuer thereof, and shall also include a depositary receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act), as custodian with respect to any such Government Securities or a specific payment of principal of or interest on any such Government Securities held by such custodian for the account of the holder of such depositary receipt; *provided* that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depositary receipt from any amount received by the custodian in respect of the Government Securities or the specific payment of principal of or interest on the Government Securities evidenced by such depositary receipt.

"Guarantee" means (1) any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any other Person and (2) any obligation, direct or indirect, contingent or otherwise, of such Person:

(a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness of such other Person (whether arising by virtue of partnership arrangements, or by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise); or

(b) entered into for purposes of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part); *provided, however,* that the term "Guarantee" shall not include endorsements for collection or deposit in the ordinary course of business.

"Guarantor" means each of the signatories hereto other than the Issuer and the Trustee as well as any Person that may in the future provide a Note Guarantee or that provides a Note Guarantee on the Issue Date pursuant to this Indenture or otherwise. For purposes of Articles 10 and 11 of this Indenture, the term "Guarantor" will be deemed not to include either of Thomas Matthew Clarke or Ana Mercedes Clarke.

"Hedging Obligations" of any Person means the obligations of such Person pursuant to any Interest Rate Agreement, Currency Agreement or Commodity Agreement.

"Holder" means a Person in whose name a Note is registered on the Registrar's books.

"Incur" means issue, create, assume, Guarantee, incur or otherwise become liable for; *provided, however,* that any Indebtedness or Capital Stock of a Person existing at the time

such Person becomes a Subsidiary (whether by merger, consolidation, acquisition or otherwise) shall be deemed to be Incurred by such Subsidiary at the time it becomes a Subsidiary; and the terms "Incurred" and "Incurrence" have meanings correlative to the foregoing.

"Indebtedness" of any Person means, without duplication:

(1) the principal of and premium (if any) in respect of indebtedness of such Person for borrowed money;

(2) the principal of and premium (if any) in respect of obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;

(3) the principal component of all obligations of such Person in respect of letters of credit, bankers' acceptances or other similar instruments (including reimbursement obligations with respect thereto except to the extent such reimbursement obligation relates to a trade payable and such obligation is satisfied within 30 days of Incurrence);

(4) the principal component of all obligations of such Person to pay the deferred and unpaid purchase price of property (including earn-out obligations), which purchase price is due after the date of placing such property in service or taking delivery and title thereto, except (a) any such balance that constitutes a trade payable or similar obligation to a trade creditor, in each case accrued in the ordinary course of business and (b) any earn-out obligation until the amount of such obligation becomes a liability on the balance sheet of such Person in accordance with GAAP;

(5) Capitalized Lease Obligations of such Person (whether or not such items would appear on the balance sheet of such Person in accordance with GAAP);

(6) the greater of the maximum mandatory redemption or repurchase price (not including, in either case, any redemption or repurchase premium) or the principal component or liquidation preference of all obligations of such Person with respect to the redemption, repayment or other repurchase of any Disqualified Stock;

(7) the principal component of all Indebtedness of other Persons secured by a Lien on any asset of such Person, whether or not such Indebtedness is assumed by such Person;

(8) the principal component of Indebtedness of other Persons to the extent Guaranteed by such Person (whether or not such items would appear on the balance sheet of such Person in accordance with GAAP);

(9) to the extent not otherwise included in this definition, net obligations of such Person under Hedging Obligations (the amount of any such obligations to be equal at any time to the termination value of such agreement or arrangement giving rise to such Obligation that would be payable by such Person at such time); and

(10) to the extent not otherwise included in this definition, the amount of

obligations outstanding under the legal documents entered into as part of a securitization transaction or series of securitization transactions that would be characterized as principal if such transaction were structured as a secured lending transaction rather than as a purchase relating to a securitization transaction or series of securitization transactions.

Notwithstanding the foregoing, the amount of any Indebtedness outstanding as of any date shall (i) be the accreted value thereof in the case of any Indebtedness issued with original issue discount or the aggregate principal amount outstanding in the case of Indebtedness issued with interest payable in kind and (ii) include any interest (or in the case of Preferred Stock, dividends) thereon that is more than 30 days past due. Except to the extent provided in the preceding sentence, the amount of any Indebtedness that is convertible into or exchangeable for Capital Stock of the Issuer outstanding as of any date shall be deemed to be equal to the principal and premium, if any, in respect of such Indebtedness, notwithstanding the provisions of GAAP (including Accounting Standards Codification Topic 470-20, Debt-Debt with Conversion and Other Options).

In addition, "Indebtedness" of any Person shall include Indebtedness described in the preceding paragraph that would not appear as a liability on the balance sheet of such Person if:

(1) such Indebtedness is the obligation of a partnership or joint venture that is not a Subsidiary;

(2) such Person or a Subsidiary of such Person is a general partner of the partnership or joint venture as contemplated in subclause (1) above; and

(3) there is recourse, by contract or operation of law, with respect to the payment of such Indebtedness to property or assets of such Person or a Subsidiary of such Person; and then such Indebtedness shall be included in an amount not to exceed:

(a) the lesser of (i) the net assets of a general partner as contemplated in subclause (2) above and (ii) the amount of such obligations to the extent that there is recourse, by contract or operation of law, to the property or assets of such Person or a Subsidiary of such Person; or

(b) if less than the amount determined pursuant to clause (a) immediately above, the actual amount of such Indebtedness that is recourse to such Person or a Subsidiary of such Person, if the Indebtedness is evidenced by a writing and is for a determinable amount.

Indebtedness shall not include any obligations relating to any factoring or other accounts receivable or iron ore concentrate or pellet inventory sales arrangements the cash proceeds of which are encumbered by the security interest in Collateral granted to the Holders in the Security Agreement, provided that any discount to the face amount of an invoice sold shall not exceed 5.0%.

"Indenture" means this Indenture, as amended or supplemented from time to time.

"Independent Financial Advisor" means an accounting, appraisal, investment banking firm or consultant to Persons engaged in Similar Businesses of nationally recognized standing that is, in the good faith judgment of the Issuer, qualified to perform the task for which it has been engaged.

"Initial Interest Period" means the date of the original issuance of the Notes hereunder through March 30, 2017.

"Interest Determination Date" for an Interest Period shall be the second Business Day preceding the first day of such Interest Period (or, in the case of the Initial Interest Period, the second Business Day preceding the date of the original issuance of Notes hereunder).

"Interest Payment Date" means each of March 31, June 30, September 30 and December 31 of each fiscal year beginning on, and inclusive of, March 31, 2017.

"Interest Period" means the period commencing on an Interest Payment Date (or, in the case of the Initial Interest Period, commencing on the date of the original issuance of the Notes hereunder) and ending on the day preceding the next following Interest Payment Date or the redemption date, as applicable.

"Interest Rate Agreement" means, with respect to any Person, any interest rate future or forward, swap or option, cap or collar or other similar agreement or arrangement as to which such Person is party or a beneficiary.

"Investment" means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of any direct or indirect advance, loan (other than advances or extensions of credit to customers in the ordinary course of business) or other extensions of credit (including by way of Guarantee or similar arrangement, but excluding any debt or extension of credit represented by a bank deposit (other than a time deposit)) or capital contribution to (by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others), or any purchase or acquisition of Capital Stock, Indebtedness or other similar instruments issued by, such Person and all other items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP; *provided* that an acquisition of assets, Capital Stock or other securities by the Issuer or a Subsidiary for consideration to the extent such consideration consists of Common Stock of the Issuer shall not be deemed to be an Investment.

"Issue Date" means the date of the issuance of any Notes hereunder, including any Interest Payment Date on which additional Notes in respect of PIK Interest are to be issued.

"Issuer" means the party named as such in the first paragraph of this Indenture or any successor obligor to its Obligations under this Indenture, the Notes or the Security Agreement.

"Itasca County Properties Plant #4" means operational facilities in Coleraine, Minnesota for the production of iron ore concentrate, capable of producing at least 1.6 million tonnes annually when operating at maximum capacity.

"Lien" means, (i) with respect to any asset, any mortgage, lien (statutory or otherwise), pledge, hypothecation, charge, security interest, preference, assignment priority or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any lease or license in the nature thereof or sale/leaseback, any option, trust, or other preferential arrangement or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction, or having the practical effect of any of the foregoing; *provided* that in no event shall an operating lease be deemed to constitute a Lien; and (ii) in the case of Equity Interests, any purchase option, call or similar right of a third party with respect to such Equity Interests.

"LIBOR" means, with respect to any Interest Determination Date, the London interbank offered rate as administered by ICE Benchmark Administration Limited (or any other Person that takes over the administration of such rate) for deposits in immediately available funds in United States dollars having a maturity of three months as displayed on the Bloomberg screen page that displays such rate, or on the appropriate page or screen of such other comparable information service that publishes such rate from time to time as selected by the Calculation Agent in its discretion (and in consultation with the Issuer) on that Interest Determination Date. If no rate appears, in respect of that Interest Determination Date, the Calculation Agent shall request the principal London offices of each of four major reference banks in the London interbank market, as selected by the Calculation Agent, to provide the Calculation Agent with its offered quotation for deposits in United States dollars for the period of three months, commencing on the second London Business Day following such Interest Determination Date, to prime banks in the London interbank market at approximately 11:00 a.m., London time, on that Interest Determination Date and in a principal amount that is representative for a single transaction in United States dollars in that market at that time. If at least two quotations are provided, then LIBOR on that Interest Determination Date shall be the arithmetic mean of those quotations. If fewer than two quotations are provided, then LIBOR on the Interest Determination Date shall be the arithmetic mean of the rates quoted at approximately 11:00 a.m., in the City of New York, on the Interest Determination Date by three major banks in the City of New York selected by the Calculation Agent for loans in United States dollars to leading European banks, having a three-month maturity and in a principal amount that is representative for a single transaction in United States dollars in that market at that time; *provided, however*, that if the banks selected by the Calculation Agent are not providing quotations in the manner described by this sentence, LIBOR shall be the same as the rate determined for the immediately preceding Interest Period. LIBOR will in no event be less than 0.00% per annum.

"London Business Day" means each day that is not a Saturday, Sunday or other day on which banking institutions in London are authorized or required by law to close.

"Mechanics Lien Royalty Agreements" means those agreements to be entered into pursuant to that certain preliminary memorandum of understanding, dated November 18, 2016 among the Issuer, FerroMagnetica, and the mechanic lien claimants identified in Exhibit A thereto.

"Mechanics Lienholders" means, any Person, whether now or hereafter, entitled to payment pursuant to the ML Notes.

"ML Notes" means the 3% notes issued to the Mechanics Lienholders by the Issuer and FerroMagnetica on or about the date of the original issuance of the Notes hereunder.

"Moody's" means Moody's Investors Service, Inc. and any successor to its rating agency business.

"Mortgages" means the mortgages, debentures, hypothecs, deeds of trust, deeds to secure Indebtedness or other similar documents securing Liens on the Premises, as well as the other Collateral, if any, secured by and described in the mortgages, debentures, hypothecs, deeds of trust, deeds to secure Indebtedness, mortgages made by the Issuer or any other Guarantor in favor or for the benefit of the Trustee or the Collateral Agent, or other similar documents, in form and substance reasonably satisfactory to the Trustee or the Collateral Agent, as the case may be.

"Net Award" means any awards or proceeds in respect of any condemnation, seizure, taking or other eminent domain proceeding relating to any Collateral.

"Net Insurance Proceeds" means any awards or proceeds in respect of any casualty insurance or title insurance claim relating to any Collateral.

"Note Guarantee" means, individually, any Guarantee of payment of the Notes and the Issuer's other Obligations under each other Notes Document by a Guarantor pursuant to the terms of this Indenture and any supplemental indenture thereto or any supplemental guarantee agreement, and, collectively, all such Guarantees.

"Notes" means the Notes and more particularly means any Note authenticated and delivered under this Indenture. For all purposes of this Indenture, the term "Notes" shall also include any Notes to be issued or authenticated upon registration of transfer, replacement or exchange of Notes and any Notes to be issued in connection with a PIK Payment.

"Notes Document" means any of this Indenture, the Notes, the Note Guarantees, the Security Agreement and the Collateral Documents, and any related documents thereto, as amended or supplemented from time to time.

"Obligations" means any principal (including the Amortization Amounts to be paid on each Amortization Payment Date), interest (including any interest accruing subsequent to the filing of a petition in bankruptcy, reorganization or similar proceeding at the rate provided for in the documentation with respect thereto, whether or not such interest is an allowed claim under applicable state, federal or foreign law and any Additional Amounts), other monetary obligations, penalties, fees, indemnifications, reimbursements (including reimbursement obligations with respect to letters of credit and banker's acceptances), damages and other liabilities, and Guarantees of payment of such principal, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities, payable under the documentation governing any Indebtedness.

"Obligor" means the Issuer and any Guarantor other than Thomas Matthew Clarke and Ana Mercedes Clarke.

"Officer" of any Person means the Chairman of the Board, the Chief Executive Officer, the President, the Chief Financial Officer, any Executive Vice President, Senior Vice President or Vice President, the Treasurer or the Secretary of such Person or, in the event that such Person is a partnership or a limited liability company that has no such officers, a person duly authorized under applicable law by the general partner, managers, members or a similar body to act on behalf of such Person.

"Officers' Certificate" means a certificate signed by two Officers of the Person delivering such Officers' Certificate, one of whom is the principal executive officer, the principal financial officer or the principal accounting officer.

"Opinion of Counsel" means a written opinion from legal counsel. The counsel may be an employee of or counsel to the Issuer.

"Partial PIK Interest" means the payment of interest on the Notes through an increase in the principal amount of the outstanding Notes equal to some portion (but not all) of the amount of accrued and unpaid interest due on the relevant Interest Payment Date, to the extent that only a portion of the interest due on an Interest Payment Date is so paid.

"Payment Date" means any Interest Payment Date or Amortization Payment Date, as applicable.

"Permitted Change of Control" means a Change of Control involving one or more investments in the Issuer by Ferro Magnetica, LLC or its Affiliates.

"Permitted Investment" means:

(1) an Investment in an Obligor or a Subsidiary of such Obligor;

(2) any Investment in direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States), in each case maturing within one year from the date of acquisition thereof;

(3) any Investment by an Obligor or any of their Subsidiaries in a Person that is engaged in a Similar Business if as a result of such Investment:

(a) such Person becomes a Guarantor; or

(b) such Person, in one transaction or a series of related transactions, is merged or consolidated with or into, or transfers or conveys all or substantially all of its assets to, or is liquidated into, the Issuer or a Guarantor,

and, in each case, any Investment held by such Person; *provided* that such

Investment was not acquired by such Person in contemplation of such acquisition, merger, consolidation or transfer and does not materially and adversely affect the ability of the Issuer to make scheduled payments of interest and principal under the Notes;

(4) any Investment in cash and Cash Equivalents;

(5) Investments in existence on the Issue Date;

(6) Guarantees issued in accordance with Section 4.09;

(7) any Investment acquired by an Obligor or any of their Subsidiaries:

(a) in exchange for any other Investment or accounts receivable held by such Obligor or any such Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of the issuer of such other Investment or accounts receivable; or

(b) as a result of a foreclosure by such Obligor or any of its Subsidiaries with respect to any secured Investment or other transfer of title with respect to any secured Investment in default; and

(8) Investments made as a result of the receipt of non-cash consideration from an asset sale that was made pursuant to and in compliance with Section 5.01.

"Permitted Liens" means, with respect to any Person:

(1) Liens imposed by law, including carriers', warehousemen's, mechanics', materialmen's and repairmen's Liens, Incurred in the ordinary course of business;

(2) pledges or deposits by such Person under workers' compensation laws, unemployment insurance laws or similar legislation, or good faith deposits in connection with bids, tenders, contracts (other than for the payment of Indebtedness) or leases to which such Person is a party, or deposits to secure public or statutory obligations of such Person or deposits of cash or U.S. government bonds to secure surety or appeal bonds to which such Person is a party, or deposits as security for contested taxes or import or customs duties or for the payment of rent, in each case Incurred in the ordinary course of business;

(3) Liens for taxes, assessments or other governmental charges not yet subject to penalties for non-payment or that are being contested in good faith by appropriate proceedings provided appropriate reserves required pursuant to GAAP have been made in respect thereof;

(4) encumbrances, ground leases, easements or reservations of, or rights of others for, licenses, rights of way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning, building codes or other restrictions (including, without limitation, minor defects or irregularities in title and similar encumbrances) as to the use

of real properties or Liens incidental to the conduct of the business of such Person or to the ownership of its properties that do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Person;

(5) leases, licenses, subleases and sublicenses of assets (including, without limitation, real property and intellectual property rights) that do not materially interfere with the ordinary conduct of the business of any Obligor or any of their Subsidiaries;

(6) judgment Liens not giving rise to an Event of Default so long as such Lien is adequately bonded and any appropriate legal proceedings which may have been duly initiated for the review of such judgment have not been finally terminated or the period within which such proceedings may be initiated has not expired;

(7) Liens arising solely by virtue of any statutory or common law provisions relating to banker's Liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with a depositary institution; *provided* that:

(a) such deposit account is not a dedicated cash collateral account and is not subject to restrictions against access by the applicable Obligor in excess of those set forth by regulations promulgated by the Federal Reserve Board; and

(b) such deposit account is not intended by the applicable Obligor or any Subsidiary of such Obligor to provide collateral for Indebtedness to the depository institution;

(8) Liens existing on the Issue Date (other than Liens permitted under clause (10));

(9) Liens securing Indebtedness or other obligations of a Subsidiary of an Obligor owing to such Obligor or another Subsidiary of such Obligor;

(10) Liens securing the Notes and the Note Guarantees issued on the Issue Date and any obligations owing to the Trustee or any other Agent under this Indenture or any other Notes Document;

(11) Liens securing Refinancing Indebtedness Incurred to refinance, refund, replace, amend, extend or modify, as a whole or in part, Indebtedness that was previously so secured pursuant to clauses (8), (10) and this clause (11) of this definition; provided that (i) any such Lien is limited to all or part of the same property or assets (plus improvements, accessions, proceeds or dividends or distributions in respect thereof) that secured (or, under the written arrangements under which the original Lien arose, could secure) the Indebtedness being refinanced or is in respect of property that is the security for a Permitted Lien hereunder and (ii) the new Lien has no greater priority relative to the Notes and to Note Guarantees, and the holders of such Indebtedness secured by such Liens have no greater rights relative to the Notes and the Note Guarantees, than the original Liens and related Indebtedness and the holders thereof;

(12) Liens in favor of an Obligor or any Subsidiary of any Obligor;

(13) Liens under industrial revenue, municipal or similar bonds;

(14) Liens on the Collateral securing any Indebtedness Incurred under Section 4.09(b)(3); for the avoidance of doubt, Liens permitted under this clause (14) may be senior in priority to the Liens on the Collateral securing the Notes;

(15) Liens on property or Capital Stock of a Person at the time such Person becomes a Subsidiary of an Obligor; *provided, however*, that such Liens are not created, Incurred or assumed in connection with, or in contemplation of, such other Person becoming a Subsidiary of such Obligor; *provided, further, however*, that any such Lien may not extend to any other property owned by the applicable Obligor or any Subsidiary of such Obligor and as do not materially impair their use in the operation of the business of such Person; *provided, further*, that such Liens not materially and adversely affect the ability of such Obligor to make scheduled payments of interest and principal under the Notes;

(16) Liens on property at the time an Obligor or a Subsidiary of an Obligor acquired the property, including any acquisition by means of a merger or consolidation with or into such Obligor or any Subsidiary of such Obligor; *provided, however*, that such Liens are not created, Incurred or assumed in connection with, or in contemplation of, such acquisition; *provided, further, however*, that such Liens may not extend to any other property owned by such Obligor or any Subsidiary of such Obligor and as do not materially impair their use in the operation of the business of such Person; *provided, further*, that such Liens not materially and adversely affect the ability of such Obligor to make scheduled payments of interest and principal under the Notes;

(17) Liens on specific items of inventory or other goods and proceeds of any Person securing such Person's obligations in respect of bankers' acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods and as do not materially impair their use in the operation of the business of such Person; *provided, further, however*, that such Liens may not extend to any other property owned by such Obligor or any Subsidiary of such Obligor and as do not materially impair their use in the operation of the business of such Person; *provided, further*, that such Liens not materially and adversely affect the ability of such Obligor to make scheduled payments of interest and principal under the Notes;

(18) mortgage Liens and security interests granted in all real and personal property acquired by the Issuer under the APA to mechanic's/miner's lien claimants identified as of the date of the original issuance of the Notes hereunder, which mortgage Liens and security interests will be junior in payment priority to the Liens granted to the Collateral Agent under the Collateral Documents, *provided, however*, that Liens claimed by such mechanic's/miner's lien claimants in the assets known as the Itasca County Properties Plant #4 shall have the payment priority decided in the final resolution of a civil action pending in Itasca County District Court (Court File No. #31-CV-15-3288);

(19) Liens to be granted to AK Steel Holding Corporation ("AKS") in connection with the Issuer's purchase of materials and supplies from AKS pursuant to the Global Settlement Agreement (as defined in the APA); and

(20) Liens on the Coke Guarantor's assets other than the Coke Plant securing any Indebtedness Incurred under Section 4.09(b)(12); for the avoidance of doubt no Liens shall be placed on the Coke Plant pursuant to this provision.

"Person" means any natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and governmental authorities.

"PIK Interest" means the payment of interest (including Additional Amounts, if any) on the Notes through an increase in the principal amount of the outstanding Notes equal to the amount of accrued and unpaid interest due on the relevant Interest Payment Date.

"Premises" means the owned real property (including all real property) that is required to be subject to Mortgages and forms a portion of the Collateral.

"Preferred Stock," as applied to the Capital Stock of any corporation, means Capital Stock of any class or classes (however designated) which is preferred as to the payment of dividends, or as to the distributions of assets upon any voluntary or involuntary liquidation or dissolution of such corporation, over shares of Capital Stock of any other class of such corporation.

"Real Estate Leases" means any existing or hereafter acquired leasehold interests in real property, or licenses or other agreements with regard to accessing real property or accessing or removing iron ore or iron ore tailings and the term "Leased Real Property" shall have a meaning correlative to the foregoing.

"Receivable" means a right to receive payment arising from a sale or lease of goods or the performance of services by a Person pursuant to an arrangement with another Person pursuant to which such other Person is obligated to pay for goods or services under terms that permit the purchase of such goods and services on credit and shall include, in any event, any items of property that would be classified as an "account," "chattel paper," "payment intangible" or "instrument" under the Uniform Commercial Code as in effect in the State of New York and any "supporting obligations" as so defined.

"Recovery Event" means any event, occurrence, claim or proceeding that results in any Net Award or Net Insurance Proceeds.

"Record Date" for the amount payable on any Payment Date means March 15, June 15, September 15 and December 15, (whether or not a Business Day) next preceding such Interest Payment Date.

"Refinancing Indebtedness" means Indebtedness that is Incurred to refund, refinance, replace, exchange, renew, repay or extend (including pursuant to any defeasance or

discharge mechanism) (collectively, "refinance," "refinances," "refinanced" and "refinancing" shall each have a correlative meaning) any Indebtedness existing on the Issue Date or Incurred in compliance with this Indenture, defeasance costs, accrued interest and fees and expenses (including fees and expenses relating to the Incurrence of such Refinancing Indebtedness) in connection with any such refinancing) including Indebtedness that refinances Refinancing Indebtedness; *provided, however*, that:

(1) (a) if the Stated Maturity of the Indebtedness being refinanced is earlier than the Stated Maturity of the Notes, the Refinancing Indebtedness has a Stated Maturity no earlier than the Stated Maturity of the Indebtedness being refinanced or (b) if the Stated Maturity of the Indebtedness being refinanced is later than the Stated Maturity of the Notes, the Refinancing Indebtedness has a Stated Maturity at least 91 days later than the Stated Maturity of the Notes;

(2) the Refinancing Indebtedness has an Average Life at the time such Refinancing Indebtedness is Incurred that is equal to or greater than the Average Life of the Indebtedness being refinanced;

(3) such Refinancing Indebtedness is Incurred in an aggregate principal amount (or if issued with original issue discount, an aggregate issue price) that is equal to or less than the sum of the aggregate principal amount (or if issued with original issue discount, the aggregate accreted value) then outstanding of the Indebtedness being refinanced (plus, without duplication, any additional Indebtedness Incurred to pay premiums required by the instruments governing such existing Indebtedness or reasonable tender premiums, as determined in good faith, defeasance costs, accrued interest and fees and expenses in connection with any such refinancing);

(4) to the extent such Refinancing Indebtedness is secured, the Liens securing such Refinancing Indebtedness have a Lien priority equal with or junior to the Liens securing the Indebtedness being refunded, refinanced, replaced, exchanged, renewed, repaid or extended; and

(5) if the Indebtedness being refinanced is subordinated in right of payment to the Notes or the Note Guarantees, such Refinancing Indebtedness is subordinated in right of payment to the Notes or the Note Guarantees on terms at least as favorable to the Holders as those contained in the documentation governing the Indebtedness being refinanced.

"Responsible Officer" means, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee having direct responsibility for the administration of this Indenture.

"Restricted Investment" means any Investment other than a Permitted Investment.

"Reuters Screen LIBOR01 Page" means the display designated on page "LIBOR01" on Reuters (or such other page as may replace the LIBOR01 page on that service or any successor service for the purpose of displaying London interbank offered rates for U.S. dollar deposits of major banks).

"S&P" means Standard & Poor's, a division of The McGraw-Hill Companies,

Inc., and any successor to its rating agency business.

"SEC" means the U.S. Securities and Exchange Commission.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

"Security Agreement" means the Security Agreement, dated on or about the date of the original issuance of the Notes hereunder, by and among the Issuer, certain other grantors party thereto from time to time and the Collateral Agent.

"Senior Management" means the chief executive officer and the chief financial officer of the Issuer.

"Similar Business" means any business conducted or proposed to be conducted by the Issuer and its Subsidiaries on the Issue Date or any business that is similar, reasonably related, incidental or ancillary thereto.

"Specified Event of Default" means a quarterly interest payment Event of Default under Section 6.01(a)(1) that continues for a period of nine (9) consecutive months after the scheduled Interest Payment Date.

"Stated Maturity" means, with respect to any security, the date specified in the agreement governing or certificate relating to such Indebtedness as the fixed date on which the final payment of principal of such security is due and payable, including pursuant to any mandatory redemption provision, but not including any contingent obligations to repay, redeem or repurchase any such principal prior to the date originally scheduled for the payment thereof.

"Subordinated Indebtedness" means any financing from any source, including Affiliates of the Issuer, incurred by the Issuer to meet its working capital requirements, which indebtedness is subordinated in right of payment to the Notes and the Note Guarantees.

"Subsidiary" of any Person means (1) any corporation, association or other business entity (other than a partnership, joint venture, limited liability company or similar entity) of which more than 50% of the total ordinary voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof (or Persons performing similar functions) or (2) any partnership, joint venture limited liability company or similar entity of which more than 50% of the capital accounts, distribution rights, total equity and voting interests or general or limited partnership interests, as applicable, is, in the case of clauses (1) and (2), at the time owned or controlled, directly or indirectly, by (a) such Person, (b) such Person and one or more Subsidiaries of such Person or (c) one or more Subsidiaries of such Person. Unless otherwise specified herein, each reference to a Subsidiary shall refer to a Subsidiary of the Issuer.

"Transfer Restricted Notes" means Definitive Notes and any other Notes that bear or are required to bear the Restricted Notes Legend.

"Trust Indenture Act" means the Trust Indenture Act of 1939, as amended.

"Trustee" means the party named as such in the first paragraph of this Indenture, until a successor replaces it in accordance with the applicable provisions of this Indenture and thereafter means the successor serving hereunder.

"Uniform Commercial Code" means the Uniform Commercial Code as in effect from time to time in any applicable jurisdiction.

"Voting Stock" of a Person means all classes of Capital Stock of such Person then outstanding and normally entitled to vote in the election of directors, managers or trustees, as applicable, of such Person.

"Wholly Owned Subsidiary" means a Subsidiary, all of the Capital Stock of which (other than directors' qualifying shares) is owned by an Obligor or another Wholly Owned Subsidiary.

Section 1.02 Other Definitions.

Term	Defined in Section
"Acceleration Effective Date"	6.02(a)(2)
"Acceleration Effective Date Notice"	4.15(a)
"Additional Amounts"	2.15(a)
"Affiliate Transaction"	4.14
"Agent Members"	2.1(b) of Appendix A
"Applicable Procedures"	1.1(a) of Appendix A
"Applicable Rate"	2.14(a)
"Authentication Order"	2.02(c)
"Clarke Redemption Date"	6.02(b)
"Clarke Redemption Failure Notice"	6.02(b)
"Clearstream"	1.1(a) of Appendix A
"Deficiency Amount"	6.02(b)
"Definitive Notes Legend"	2.2(e) of Appendix A
"Distribution Compliance Period"	1.1(a) of Appendix A
"ERISA"	2.2(e) of Appendix A
"ERISA Legend"	2.2(e) of Appendix A
"Euroclear"	1.1(a) of Appendix A
"Event of Default"	6.01(a)
"Event of Default Redemption"	4.15(a)
"Event of Default Redemption Notice"	6.02(b)
"Event of Default Redemption Payment Date"	4.15(a)
"Event of Default Redemption Price"	4.15(a)
"Expiration Date"	1.05(j)
"First Standstill Expiration Date"	6.02(b)
"Global Note"	2.1(a) of Appendix A
"Global Notes Legend"	2.2(e) of Appendix A
"Guaranteed Obligations"	11.01(a)
"Guarantor Redemption Date"	6.02(b)
"Guarantor Redemption Failure Notice"	6.02(b)
"IAI"	1.1(a) of Appendix A
"IAI Global Note"	2.1(a) of Appendix A
"Interest Reset Date"	2.14(a)
"Issuer Redemption Date"	6.02(b)

Term	Defined in Section
"Issuer Redemption Failure Notice"	6.02(b)
"Leased Real Property"	Definition of Real Estate Leases
"Note Register"	2.03(a)
"OID Notes Legend"	2.2(e) of Appendix A
"Paying Agent"	2.03(a)
"PDF"	2.06(i)
"PIK Payment"	2.01(a)
"QIB"	1.1(a) of Appendix A
"Redemption Failure Notice"	6.02(b)
"Registrar"	2.03(a)
"Regulation S"	1.1(a) of Appendix A
"Regulation S Global Note"	2.1(a) of Appendix A
"Relevant Jurisdictions"	2.15(a)
"Relevant Taxing Jurisdiction"	2.15(a)
"Resale Restriction Termination Date"	2.2(e) of Appendix A
"Restricted Notes Legend"	2.2(e) of Appendix A
"Restricted Payment"	4.08
"Rule 144"	1.1(a) of Appendix A
"Rule 144A"	1.1(a) of Appendix A
"Rule 144A Global Note"	2.1(a) of Appendix A
"Second Standstill Expiration Date"	6.02(b)
"Section 4.15 Notice"	4.15(b)
"Similar Laws"	2.2(e) of Appendix A
"Standstill Period"	6.02(b)
"Successor Company"	5.01
"Third Standstill Expiration Date"	6.02(b)
"Unrestricted Global Note"	1.1(a) of Appendix A
"U.S. Person"	1.1(a) of Appendix A

Section 1.03 Rules of Construction.

Unless the context otherwise requires:

(1) a term defined in Section 1.01 or 1.02 has the meaning assigned to it therein;

(2) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;

(3) "or" is not exclusive;

(4) words in the singular include the plural, and words in the plural include the singular;

(5) provisions apply to successive events and transactions;

(6) unless the context otherwise requires, any reference to an "Appendix," "Article," "Section," "clause," "Schedule" or "Exhibit" refers to an Appendix, Article, Section, clause, Schedule or Exhibit, as the case may be, of this Indenture;

(7) the words "herein," "hereof" and other words of similar import refer to this Indenture as a whole and not any particular Article, Section, clause or other subdivision;

(8) "including" means including without limitation;

(9) references to sections of, or rules under, the Securities Act or the Exchange Act shall be deemed to include substitute, replacement or successor sections or rules adopted by the SEC from time to time; and

(10) unless otherwise provided, references to agreements and other instruments shall be deemed to include all amendments and other modifications to such agreements or instruments, but only to the extent such amendments and other modifications are not prohibited by the terms of this Indenture.

Section 1.04 [Reserved]

Section 1.05 Acts of Holders.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing. Except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments or record or both are delivered to the Trustee and, where it is hereby expressly required, to the Issuer and the Guarantors. Proof of execution of any such instrument or of a writing appointing any such agent, or the holding by any Person of a Note, shall be sufficient for any purpose of this Indenture and (subject to Section 7.01) conclusive in favor of the Trustee, the Issuer and the Guarantors, if made in the manner provided in this Section 1.05.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved (1) by the affidavit of a witness of such execution or by the certificate of any notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof or (2) in any other manner deemed reasonably sufficient by the Trustee. Where such execution is by or on behalf of any legal entity other than an individual, such certificate or affidavit shall also constitute proof of the authority of the Person executing the same. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner that the Trustee deems sufficient.

(c) The ownership of Notes shall be proved by the Note Register.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other action by the Holder of any Note shall bind every future Holder of the same Note and the Holder of every Note issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof, in respect of any action taken, suffered or omitted by the Trustee, the Issuer or the Guarantors in reliance thereon, whether or not notation of such action is made upon such Note.

(e) The Issuer may set a record date for purposes of determining the identity of Holders entitled to make, give or take any request, demand, authorization, direction, notice, consent, waiver or other action provided in this Indenture to be made, or to vote on or consent to any action authorized or permitted to be taken by the Holders; *provided* that the Issuer may not set a record date for, and the provisions of this paragraph shall not apply with respect to, the giving or making of any notice, declaration, request or direction referred to in clause (f) below. Unless otherwise specified, if not set by the Issuer prior to the first solicitation of a Holder made by any Person in respect of any such action, or in the case of any such vote, prior to such vote, any such record date shall be the later of 30 days prior to the first solicitation of such consent or vote or the date of the most recent list of Holders furnished to the Trustee prior to such solicitation or vote. If any record date is set pursuant to this clause (e), the Holders on such record date, and only such Holders, shall be entitled to make, give or take such request, demand, authorization, direction, notice, consent, waiver or other action (including revocation of any action), whether or not such Holders remain Holders after such record date; *provided* that no such action shall be effective hereunder unless made, given or taken on or prior to the applicable Expiration Date by Holders of the requisite principal amount of Notes, or each affected Holder, as applicable, on such record date. Promptly after any record date is set pursuant to this paragraph, the Issuer, at its own expense, shall cause notice of such record date, the proposed action by Holders and the applicable Expiration Date to be given to the Trustee in writing and to each Holder in the manner set forth in Section 13.01.

(f) The Trustee may set any day as a record date for the purpose of determining the Holders entitled to join in the giving or making of (1) any notice of default under Section 6.01(a), (2) any declaration of acceleration referred to in Section 4.15 or Section 6.02, (3) any direction referred to in Section 6.04 or (4) any request to pursue a remedy as permitted in Section 6.05. If any record date is set pursuant to this paragraph, the Holders on such record date, and no other Holders, shall be entitled to join in such notice, declaration, request or direction, whether or not such Holders remain Holders after such record date; *provided* that no such action shall be effective hereunder unless made, given or taken on or prior to the applicable Expiration Date by Holders of the requisite principal amount of Notes or each affected Holder, as applicable, on such record date. Promptly after any record date is set pursuant to this paragraph, the Trustee, at the Issuer's expense, shall cause notice of such record date, the proposed action by Holders and the applicable Expiration Date to be given to the Issuer and to each Holder in the manner set forth in Section 13.01.

(g) Without limiting the foregoing, a Holder entitled to take any action hereunder with regard to any particular Note may do so with regard to all or any part of the principal amount of such Note or by one or more duly appointed agents, each of which may do so pursuant to such appointment with regard to all or any part of such principal amount. Any notice given or action taken by a Holder or its agents with regard to different parts of such principal amount pursuant to this paragraph shall have the same effect as if given or taken by separate Holders of each such different part.

(h) Without limiting the generality of the foregoing, a Holder, including a Depositary that is the Holder of a Global Note, may make, give or take, by a proxy or proxies duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other action provided in this Indenture to be made, given or taken by Holders, and a

Depositary that is the Holder of a Global Note may provide its proxy or proxies to the beneficial owners of interests in any such Global Note through such Depositary's standing instructions and customary practices.

(i) The Issuer may fix a record date for the purpose of determining the Persons who are beneficial owners of interests in any Global Note held by a Depositary entitled under the procedures of such Depositary, if any, to make, give or take, by a proxy or proxies duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other action provided in this Indenture to be made, given or taken by Holders; *provided* that if such a record date is fixed, only the beneficial owners of interests in such Global Note on such record date or their duly appointed proxy or proxies shall be entitled to make, give or take such request, demand, authorization, direction, notice, consent, waiver or other action, whether or not such beneficial owners remain beneficial owners of interests in such Global Note after such record date. No such request, demand, authorization, direction, notice, consent, waiver or other action shall be effective hereunder unless made, given or taken on or prior to the applicable Expiration Date.

(j) With respect to any record date set pursuant to this Section 1.05, the party hereto that sets such record date may designate any day as the "Expiration Date" and from time to time may change the Expiration Date to any earlier or later day; *provided* that no such change shall be effective unless notice of the proposed new Expiration Date is given to the other party hereto in writing, and to each Holder of Notes in the manner set forth in Section 13.01, on or prior to both the existing and the new Expiration Date. If an Expiration Date is not designated with respect to any record date set pursuant to this Section 1.05, the party hereto which set such record date shall be deemed to have initially designated the 90th day after such record date as the Expiration Date with respect thereto, subject to its right to change the Expiration Date as provided in this clause (j).

ARTICLE 2

THE NOTES

Section 2.01 Form and Dating; Terms.

(a) Provisions relating to the Notes issued under this Indenture are set forth in Appendix A, which is hereby incorporated in and expressly made a part of this Indenture. The Notes and the Trustee's certificate of authentication shall each be substantially in the form of Exhibit A hereto, which is hereby incorporated in and expressly made a part of this Indenture. The Notes may have notations, legends or endorsements required by law, rules or agreements with national securities exchanges to which the Issuer or any Guarantor is subject, if any, or usage (*provided* that any such notation, legend or endorsement is in a form acceptable to the Issuer). Each Note shall be dated the date of its authentication. Subject to the issuance of additional Notes or the increase in the principal amount of the Global Notes in order to evidence PIK Interest (which additional Notes or increased principal amount shall be in denominations of $1.00 or any integral multiple of $1.00 in excess thereof), the Notes shall be issuable only in registered form without interest coupons and in denominations of $2,000 and any integral multiples of $1.00. On any Interest Payment Date on which the Issuer pays interest all or in part

in PIK Interest (a "PIK Payment") with respect to a Global Note, the Trustee shall, subject to the Issuer's compliance with Section 2.14(d), increase the principal amount of such Global Note by an amount equal to the interest payable as PIK Interest, rounded up to the nearest whole dollar, for the relevant Interest Period on the principal amount of such Global Note as of the relevant Record Date for such Interest Payment Date, to the credit of the Holders of such Global Note on such Record Date and an adjustment shall be made on the books and records of the Trustee with respect to such Global Note to reflect such increase.

(b) The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is limited to $22,500,000, *provided* that nothing herein shall prevent the issuance of additional Notes or the increase in the aggregate principal amount of the Global Notes issuable hereunder in connection with the payment of PIK Interest.

The terms and provisions contained in the Notes shall constitute, and are hereby expressly made, a part of this Indenture, and the Issuer, the Guarantors and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby. However, to the extent any provision of any Note conflicts with the express provisions of this Indenture, the provisions of this Indenture shall govern and be controlling.

Additional Notes issued from time to time by the Issuer in connection with the payment of PIK Interest shall be pari passu with the outstanding Notes, shall be consolidated with and form a single class with any outstanding Notes and shall have the same terms as to status, redemption or otherwise.

Section 2.02 Execution and Authentication.

(a) At least one Officer of the Issuer shall execute the Notes on behalf of the Issuer by manual or facsimile signature. If an Officer whose signature is on a Note no longer holds that office at the time a Note is authenticated, the Note shall nevertheless be valid.

(b) A Note shall not be entitled to any benefit under this Indenture or be valid or obligatory for any purpose until authenticated substantially in the form of Exhibit A attached hereto by the manual signature of an authorized signatory of the Trustee. The signature shall be conclusive evidence that the Note has been duly authenticated and delivered under this Indenture.

(c) On each Issue Date, the Trustee shall, upon receipt of a written order of the Issuer signed by an Officer of the Issuer (an "Authentication Order"), authenticate and deliver the Notes specified in such Authentication Order.

(d) The Trustee may appoint an authenticating agent acceptable to the Issuer to authenticate Notes. An authenticating agent may authenticate Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as an Agent to deal with Holders, the Issuer or an Affiliate of the Issuer.

Section 2.03 Registrar, Paying Agent and Calculation Agent.

(a) The Issuer shall maintain an office or agency where Notes may be presented for registration of transfer or for exchange ("Registrar") and at least one office or agency where Notes may be presented for payment ("Paying Agent"). The Registrar shall keep a register of the Notes ("Note Register") and of their transfer and exchange. The Issuer may appoint one or more co-registrars and one or more additional paying agents. The term "Registrar" includes any co-registrar, and the term "Paying Agent" includes any additional paying agent. The Issuer may change any Paying Agent or Registrar without prior notice to any Holder. The Issuer shall notify the Trustee in writing of the name and address of any Agent not a party to this Indenture. If the Issuer fails to appoint or maintain another entity as Registrar or Paying Agent, the Trustee shall act as such. The Issuer or any of its Subsidiaries may act as Paying Agent or Registrar.

(b) The Issuer initially appoints The Depository Trust Company to act as Depositary with respect to the Global Notes. The Issuer initially appoints the Trustee to act as Paying Agent, Registrar and Calculation Agent for the Notes and to act as Custodian with respect to the Global Notes.

(c) The Issuer may change the Paying Agent, Registrar or Calculation Agent without notice to the Holders. The Issuer or any of its Subsidiaries may act in any such capacity.

Section 2.04 Paying Agent to Hold Money in Trust.

The Issuer shall, no later than 11:00 a.m. (New York City time) on each due date for the payment of principal, premium and Additional Amounts, if any, and, subject to Section 2.14(a), interest on any of the Notes, deposit with a Paying Agent a sum sufficient to pay such amount, such sum to be held in trust for the Holders entitled to the same, and (unless such Paying Agent is the Trustee) the Issuer shall promptly notify the Trustee in writing of its action or failure so to act. Each Paying Agent shall promptly notify the Issuer in the event that there is deposited with such Paying Agent an amount in excess of the amount required to be paid on any such due date, and the Issuer shall be entitled to remittance of such excess amount. The Issuer shall require each Paying Agent other than the Trustee to agree in writing that such Paying Agent shall hold in trust for the benefit of Holders or the Trustee all money held by such Paying Agent for the payment of principal, premium and Additional Amounts, if any, and interest on the Notes, and shall notify the Trustee of any default by the Issuer in making any such payment. While any such default continues, the Trustee may require a Paying Agent to pay all money held by it to the Trustee. The Issuer at any time may require a Paying Agent to pay all money held by it to the Trustee. Upon payment over to the Trustee, a Paying Agent shall have no further liability for the money. If the Issuer or a Subsidiary acts as Paying Agent, it shall segregate and hold in a separate trust fund for the benefit of the Holders all money held by it as Paying Agent. Upon any bankruptcy or reorganization proceedings relating to the Issuer, the Trustee shall serve as Paying Agent for the Notes.

Section 2.05 Holder Lists.

The Registrar shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of all Holders. If the Trustee is not the Registrar, the Issuer shall furnish to the Trustee at least five Business Days after each Record

Date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of the Holders.

Section 2.06 Transfer and Exchange.

(a) The Notes shall be issued in registered form and shall be transferable only upon the surrender of a Note for registration of transfer and in compliance with Appendix A.

(b) To permit registrations of transfers and exchanges, the Issuer shall execute and the Trustee shall authenticate Global Notes and Definitive Notes upon receipt of an Authentication Order in accordance with Section 2.02 or at the Registrar's request.

(c) No service charge shall be imposed in connection with any registration of transfer or exchange (other than pursuant to Section 2.07), but the Holders shall be required to pay any transfer tax or similar governmental charge payable in connection therewith (other than any such transfer taxes or similar governmental charge payable upon exchange or transfer pursuant to Sections 2.10 and 9.05).

(d) All Global Notes and Definitive Notes issued upon any registration of transfer or exchange of Global Notes or Definitive Notes shall be the valid obligations of the Issuer, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Global Notes or Definitive Notes surrendered upon such registration of transfer or exchange.

(e) Neither the Issuer nor the Registrar shall be required to register the transfer of or to exchange any Note between a Record Date and the next succeeding Payment Date.

(f) Prior to due presentment for the registration of a transfer of any Note, the Trustee, any Agent and the Issuer may deem and treat the Person in whose name any Note is registered as the absolute owner of such Note for the purpose of receiving payment of principal, premium, if any, and (subject to the Record Date provisions of the Notes) interest on such Notes and for all other purposes, and none of the Trustee, any Agent or the Issuer shall be affected by notice to the contrary.

(g) Upon surrender for registration of transfer of any Note at the office of the Trustee as set forth in Section 13.01, the Issuer shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more replacement Notes of any authorized denomination or denominations of a like aggregate principal amount.

(h) At the option of the Holder, Notes may be exchanged for other Notes of any authorized denomination or denominations of a like aggregate principal amount upon surrender of the Notes to be exchanged at such office or agency. Whenever any Global Notes or Definitive Notes are so surrendered for exchange, the Issuer shall execute, and the Trustee shall authenticate and deliver, the replacement Global Notes and Definitive Notes which the Holder making the exchange is entitled to in accordance with the provisions of Appendix A.

(i) All certifications, certificates and Opinions of Counsel required to be submitted to the Registrar pursuant to this Section 2.06 to effect a registration of transfer or

exchange may be submitted by mail or by facsimile or transmission in portable document format ("PDF").

Section 2.07 Replacement Notes.

If a mutilated Note is surrendered to the Trustee or if a Holder claims that its Note has been lost, destroyed or wrongfully taken and the Trustee receives evidence to its satisfaction of the ownership and loss, destruction or theft of such Note, the Issuer shall issue and the Trustee, upon receipt of an Authentication Order, shall authenticate a replacement Note if the Trustee's requirements are otherwise met. Such Holder shall furnish to the Issuer and to the Trustee such security or indemnity as may be required by them to save each of them harmless, and, in every case of destruction, loss, or theft, the Holder shall also furnish to the Issuer and to the Trustee evidence to their satisfaction of the destruction, loss or theft, of such Note and of the ownership thereof. The Issuer may charge the Holder for the expenses of the Issuer and the Trustee in replacing a Note. Every replacement Note is a contractual obligation of the Issuer and shall be entitled to all of the benefits of this Indenture equally and proportionately with all other Notes duly issued hereunder. Notwithstanding the foregoing provisions of this Section 2.07, in case any mutilated, lost, destroyed or wrongfully taken Note has become or is about to become due and payable, the Issuer in its discretion may, instead of issuing a new Note, pay such Note.

Section 2.08 Outstanding Notes.

(a) The Notes outstanding at any time are all the Notes authenticated by the Trustee except for those canceled by it, those delivered to it for cancellation, those reductions in the interest in a Global Note effected by the Trustee in accordance with the provisions hereof, and those described in this Section 2.08 as not outstanding. Except as set forth in Section 2.09, a Note does not cease to be outstanding because the Issuer or an Affiliate of the Issuer holds the Note.

(b) If a Note is replaced pursuant to Section 2.07, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Note is held by a protected purchaser, as such term is defined in Section 8-303 of the Uniform Commercial Code in effect in the State of New York.

(c) If the principal amount of any Note is considered paid under Section 4.01, it ceases to be outstanding and interest on it ceases to accrue from and after the date of such payment.

(d) If a Paying Agent (other than the Issuer, a Subsidiary or an Affiliate of any thereof) holds, on the maturity date or any redemption date, money sufficient to pay Notes payable or to be purchased on that date, then on and after that date such Notes shall be deemed to be no longer outstanding and shall cease to accrue interest.

Section 2.09 Treasury Notes.

In determining whether the Holders of the requisite principal amount of Notes have concurred in any direction, waiver or consent, Notes beneficially owned by the Issuer or by any Affiliate of the Issuer, shall be considered as though not outstanding, except that for the

purposes of determining whether the Trustee shall be protected in conclusively relying on any such direction, waiver or consent, only Notes that a Responsible Officer of the Trustee actually knows are so owned shall be so disregarded. Notes so owned which have been pledged in good faith shall not be disregarded if the pledgee establishes to the satisfaction of the Trustee the pledgee's right to deliver any such direction, waiver or consent with respect to the Notes and that the pledgee is the Issuer or any obligor upon the Notes or any Affiliate of the Issuer or of such other obligor.

Section 2.10 Temporary Notes.

Until Definitive Notes are ready for delivery, the Issuer may prepare and the Trustee, upon receipt of an Authentication Order, shall authenticate temporary Notes. Temporary Notes shall be substantially in the form of Definitive Notes but may have variations that the Issuer considers appropriate for temporary Notes and as shall be reasonably acceptable to the Trustee. Without unreasonable delay, the Issuer shall prepare and the Trustee shall authenticate Definitive Notes in exchange for temporary Notes. Holders and beneficial holders, as the case may be, of temporary Notes shall be entitled to all of the benefits accorded to Holders, or beneficial holders, respectively, of Notes under this Indenture.

Section 2.11 Cancellation.

The Issuer at any time may deliver Notes to the Trustee for cancellation. The Registrar and Paying Agent shall forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee or, at the direction of the Trustee, the Registrar or the Paying Agent and no one else shall cancel all Notes surrendered for registration of transfer, exchange, payment, replacement or cancellation and shall dispose of such cancelled Notes in accordance with its customary procedures (subject to the record retention requirement of the Exchange Act). Certification of the cancellation of Notes delivered pursuant to this Section 2.11 shall, upon the written request of the Issuer, be delivered to the Issuer. The Issuer may not issue new Notes to replace Notes that it has paid or that have been delivered to the Trustee for cancellation.

Section 2.12 Defaulted Interest.

(a) Upon the occurrence and during the continuance of an Event of Default, the outstanding principal amount of the Notes and any accrued and unpaid interest and all other overdue amounts shall each bear interest until paid to the Persons who are Holders on a subsequent special record date at the Applicable Rate, *plus* 2.00% per annum, as provided in the Notes and in Sections 2.14 and 4.01. The Issuer shall notify the Trustee in writing of the amount of defaulted interest proposed to be paid on each Note and the date of the proposed payment, and at the same time the Issuer shall deposit with the Paying Agent an amount of money equal to the aggregate amount proposed to be paid in respect of such defaulted interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such defaulted interest as provided in this Section 2.12. The Trustee shall fix or cause to be fixed each such special record date and payment date; *provided* that no such special record date shall be less than 10 days prior to the related payment date for such defaulted interest. The Trustee

shall promptly notify the Issuer of such special record date. At least 15 days before the special record date, the Issuer (or, upon the written request of the Issuer, the Trustee in the name and at the expense of the Issuer) shall mail or deliver by electronic transmission in accordance with the applicable procedures of the Depositary, or cause to be mailed or delivered by electronic transmission in accordance with the applicable procedures of the Depositary to each Holder a notice that states the special record date, the related payment date and the amount of such interest to be paid.

(b) Subject to the foregoing provisions of this Section 2.12 and for greater certainty, each Note delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Note shall carry the rights to interest accrued and unpaid, and to accrue interest, which were carried by such other Note.

Section 2.13 CUSIP and ISIN Numbers.

The Issuer in issuing the Notes may use CUSIP or ISIN numbers (if then generally in use) and, if so, the Trustee shall use CUSIP or ISIN numbers in notices of redemption or exchange as a convenience to Holders; *provided* that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or as contained in any notice of redemption or exchange and that reliance may be placed only on the other identification numbers printed on the Notes, and any such redemption or exchange shall not be affected by any defect in or omission of such numbers. The Issuer shall as promptly as practicable notify the Trustee in writing of any change in the CUSIP or ISIN numbers.

Section 2.14 Interest.

(a) (1) Interest on the Notes shall accrue from and including the most recent date to which interest has been paid (or, if no interest has been paid, from the Issue Date) through but excluding the date on which interest is paid. Interest shall be payable quarterly in arrears on each Interest Payment Date in cash, commencing the date of the original issuance of the Notes hereunder at a rate per annum equal to LIBOR plus 8.00% (the "Applicable Rate"); *provided* that for Interest Payment Dates prior to the Interest Payment Date on June 30, 2017, the Issuer may elect, prior to the beginning of such Interest Period, to pay some or all interest as PIK Interest and, if the Issuer so elects, the Issuer shall deliver to the Trustee and the Paying Agent written notification, executed by an Officer of the Issuer, substantially in the form of Exhibit D, setting forth such election at any time prior to the first day of the applicable Interest Period (and the Trustee shall furnish a copy thereof to the Holders in accordance with the applicable procedures of the Depository). In the event that the Issuer is entitled to and elects to pay Partial PIK Interest for an Interest Period, each Holder shall be entitled to receive Cash Interest in respect of the applicable percentage of the principal amount of the Notes held by such Holder on the relevant Record Date and PIK Interest in respect of the remaining percentage of the principal amount of the Notes held by such Holder on the relevant Record Date. Following an increase in the principal amount of the outstanding Global Notes as a result of a PIK Payment, the Notes shall bear interest on such increased principal amount from and after the date of such PIK Payment. With respect to any PIK Payment in the form of Definitive Notes, no later than 10 Business Days prior to the relevant Interest Payment Date the Issuer shall deliver to the Trustee and the Paying

Agent (if other than the Trustee) an Authentication Order to authenticate on the relevant Interest Payment Date new Notes in the required principal amount (rounded up to the nearest whole dollar) (the "PIK Notes"), and the Trustee will, on the relevant Interest Payment Date, authenticate and deliver such PIK Notes in certificated form for original issuance to the Holders of Definitive Notes on the relevant Record Date, as shown by the records of the register of Holders. Each PIK Note so issued will be dated as of the applicable Interest Payment Date and will bear interest from and after such date. Any payment of PIK Interest shall be deemed to be payment in full to the same extent as if it were paid in cash.

(2) The rate of interest shall be reset on the first day of each Interest Period other than the Initial Interest Period (the date on which each such reset occurs, an "Interest Reset Date").

(b) On or before each Calculation Date, the Calculation Agent shall determine the Applicable Rate and notify the Issuer and the Paying Agent. The Calculation Agent shall, upon the written request of any Holder of the Notes, provide the interest rate then in effect with respect to the Notes. All calculations of the Calculation Agent, in the absence of manifest error, shall be conclusive for all purposes and binding on the Issuer and Guarantors and the Holders of the Notes and neither the Trustee nor the Paying Agent shall have the duty to verify determinations of interest rates made by the Calculation Agent.

(c) If the due date for any payment in respect of any Notes is not a Business Day at the place at which such payment is due to be paid, the Holder thereof shall not be entitled to payment of the amount due until the next succeeding Business Day at such place, and shall not be entitled to any further interest or other payment as a result of any such delay.

(d) No later than 10 (ten) days prior to the relevant Interest Payment Date in connection with any PIK Payment, the Issuer shall deliver to the Trustee and the Paying Agent (if other than the Trustee) written notification, executed by an Officer of the Issuer, substantially in the form of Exhibit E hereto, setting forth the amount of PIK Interest to be paid on such Interest Payment Date and directing the Trustee and the Paying Agent (if other than the Trustee) to issue PIK Notes or increase the principal amount of the Global Notes in accordance with this paragraph and Section 2.14(a), which notification the Trustee and Paying Agent shall be entitled to rely upon.

Section 2.15 Additional Amounts

(a) All payments by or on behalf of the Issuer, a Successor Company or a Guarantor of principal of, and premium (if any) and interest on the Notes or under any applicable Guarantees shall be made without withholding or deduction for, or on account of, any present or future taxes, duties, assessments or governmental charges of whatever nature imposed or levied by or within any jurisdiction in which the Issuer, a Successor Company or an applicable Guarantor is organized or resident for tax purposes or any political subdivision or taxing authority thereof or therein (each, as applicable, a "Relevant Taxing Jurisdiction") or any jurisdiction through which payment is made or any political subdivision or taxing authority thereof or therein (together with the Relevant Taxing Jurisdictions, the "Relevant Jurisdictions"), unless such withholding or deduction is required by law or by regulation or governmental policy

having the force of law. In the event that any such withholding or deduction is so required, the Issuer, a Successor Company or the applicable Guarantor, as the case may be, shall pay such additional amounts ("Additional Amounts") as shall result in receipt by the Holder of each Note or the Guarantees, as the case may be, of such amounts as would have been received by such Holder had no such withholding or deduction been required, except that no Additional Amounts shall be payable:

(1) for or on account of:

(A) any tax, duty, assessment or other governmental charge that would not have been imposed but for:

(i) the existence of any present or former connection between the Holder or beneficial owner of such Note or Guarantee, as the case may be, and the Relevant Jurisdiction other than merely holding such Note or the receipt of payments thereunder or under a Guarantee, including, without limitation, such Holder or beneficial owner being or having been a national, domiciliary or resident of such Relevant Jurisdiction or treated as a resident thereof or being or having been physically present or engaged in a trade or business therein or having or having had a permanent establishment therein;

(B) the presentation of such Note (in cases in which presentation is required) more than 30 days after the later of the date on which the payment of the principal of, premium, if any, and interest on, such Note became due and payable pursuant to the terms thereof or was made or duly provided for, except to the extent that the Holder thereof would have been entitled to such Additional Amounts if it had presented such Note for payment on any date within such 30-day period; or

(C) the failure of the Holder or beneficial owner to comply with a timely request of the Issuer, a Successor Company or any Guarantor addressed to the Holder to provide information concerning such Holder's or beneficial owner's nationality, residence, identity or connection with any Relevant Jurisdiction, if and to the extent that due and timely compliance with such request would have reduced or eliminated any withholding or deduction as to which Additional Amounts would have otherwise been payable to such Holder;

(D) any estate, inheritance, gift, sale, transfer, personal property or similar tax, assessment or other governmental charge;

(E) any withholding or deduction that is required to be made pursuant to European Council Directive 2003/48/EC on the taxation of savings income or any other Directive amending, supplementing or replacing such Directive, or any law implementing or complying with, or introduced in order to conform to, such Directives;

(F) any tax, duty, assessment or other governmental charge to the

extent such tax, duty, assessment or other governmental charge results from the presentation of the Note (where presentation is required) for payment and the payment can be made without such withholding or deduction by the presentation of the Note for payment elsewhere;

(G) any combination of taxes, duties, assessments or other governmental charges referred to in the preceding clauses (A), (B), (C) and (D); or

(H) to a Holder that is a fiduciary, partnership or person other than the sole beneficial owner of any payment to the extent that such payment would be required to be included in the income under the laws of a Relevant Jurisdiction, for tax purposes, of a beneficiary or settlor with respect to the fiduciary, or a member of that partnership or a beneficial owner who would not have been entitled to such Additional Amounts had that beneficiary, settlor, partner or beneficial owner been the Holder thereof.

(2) The Issuer shall (i) make such withholding or deduction and (ii) remit the full amount deducted or withheld to the relevant authority in accordance with applicable law. The Issuer shall, upon request by any Holder, make reasonable efforts to obtain certified copies of tax receipts evidencing the payment of any taxes so deducted or withheld from the Relevant Jurisdiction imposing such taxes. Upon request by any Holder, the Issuer shall furnish to Holders, within 60 days after the date the payment of any taxes so deducted or withheld is due pursuant to applicable law, either certified copies of tax receipts evidencing such payment or, if such receipts are not obtainable, other evidence of such payments.

(3) At least 30 days prior to each date on which any payment under or with respect to the Notes is due and payable, if the Issuer shall be obligated to pay Additional Amounts with respect to such payment, the Issuer shall deliver to the Trustee an Officer's Certificate stating the fact that such Additional Amounts will be payable and the amounts so payable and shall set forth such other information necessary to enable the Paying Agent to pay such Additional Amounts to the Holders on such payment date.

(4) In addition, the Issuer shall pay any stamp, issue, registration, documentary, value added or other similar taxes and other duties (including interest and penalties) payable in any Relevant Jurisdiction in respect of the creation, issue, offering, execution or enforcement of the Notes, or any documentation with respect thereto.

(5) Whenever there is mentioned in any context the payment of principal of, and any premium or interest on, any Note or under any Guarantee, such mention shall be deemed to include payment of Additional Amounts provided for in this Indenture to the extent that, in such context, Additional Amounts are, were or would be payable in respect thereof.

ARTICLE 3

REDEMPTION

Section 3.01 Notices to Trustee.

(a) If the Issuer elects to redeem Notes pursuant to Section 3.06, it shall furnish to the Trustee, at least two Business Days before notice of redemption is required to be mailed or delivered to Holders pursuant to Section 3.03 (unless a shorter notice shall be agreed to by the Trustee) but not more than 60 days before a redemption date, an Officers' Certificate setting forth (1) the paragraph or subparagraph of such Note or Section of this Indenture pursuant to which the redemption shall occur, (2) the redemption date, (3) the principal amount of the Notes to be redeemed, (4) the redemption price, if then ascertainable and (5) if applicable, any conditions to such redemption.

Section 3.02 Selection of Notes to be Redeemed or Purchased in Part

If less than all of the Notes are to be redeemed at any time (including, for the avoidance of doubt, under Section 4.15), selection of Notes for redemption shall be made by the Trustee by lot; *provided* that no Notes of $2,000 or less shall be redeemed in part. If any Note is to be redeemed in part only, the notice of redemption that relates to such Notes shall state the portion of the principal amount thereof to be redeemed.

Section 3.03 Notice of Redemption.

(a) The Issuer shall mail or deliver by electronic transmission in accordance with the applicable procedures of the Depositary, or cause to be mailed (or delivered by electronic transmission in accordance with the applicable procedures of the Depositary) notices of redemption of Notes not less than 30 days but not more than 60 days before the redemption date to each Holder whose Notes are to be redeemed pursuant to this Article at such Holder's registered address or otherwise in accordance with the applicable procedures of the Depositary, except that redemption notices may be mailed more than 60 days prior to a redemption date if the notice is issued in connection with Article 8 or Article 12.

(b) The notice shall identify the Notes to be redeemed (including CUSIP and ISIN number, if applicable) and shall state:

(1) the redemption date;

(2) the redemption price, including the portion thereof representing any accrued and unpaid interest; *provided* that in connection with a redemption under Section 3.06(a), the notice need not set forth the redemption price but only the manner of calculation thereof;

(3) the name and address of the Paying Agent;

(4) that Notes called for redemption must be surrendered to the Paying Agent to collect the redemption price;

(5) that, unless the Issuer defaults in making such redemption payment or the Paying Agent is prohibited from making such payment pursuant to the terms of this Indenture, interest on Notes called for redemption ceases to accrue on and after the redemption date;

(6) the paragraph or subparagraph of the Notes or Section of this Indenture pursuant to which the Notes called for redemption are being redeemed;

(7) that no representation is made as to the correctness or accuracy of the CUSIP or ISIN number, if any, listed in such notice or printed on the Notes;

(8) if any Note is being redeemed in part, the portion of the principal amount of such Note to be redeemed and that, after the applicable redemption date upon surrender of such Note, a new Note or Notes in principal amount equal to the unredeemed portion will be issued upon cancellation of the original Note; and

(9) if applicable, any condition to such redemption.

(c) At the Issuer's request, the Trustee shall give the notice of redemption in the Issuer's name and at the Issuer's expense; *provided* that the Issuer shall have delivered to the Trustee, at least five Business Days before notice of redemption is required to be sent or caused to be sent to Holders pursuant to this Section 3.03 (unless a shorter notice shall be agreed to by the Trustee), an Officers' Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in Section 3.03(b).

(d) If any Note is to be redeemed in part only, the notice of redemption that relates to that Note shall state the portion of the principal amount thereof to be redeemed, in which case a portion of the original Note will be issued in the name of the Holder thereof upon cancellation of the original Note. In the case of a Global Note, an appropriate notation will be made on such Note to decrease the principal amount thereof to an amount equal to the unredeemed portion thereof. Subject to the terms of the applicable redemption notice (including any conditions contained therein), Notes called for redemption become due on the date fixed for redemption. On and after the applicable redemption date, unless the Issuer defaults in the payment of the applicable redemption price, interest ceases to accrue on Notes or portions of them called for redemption.

Section 3.04 Effect of Notice of Redemption.

Once notice of redemption is mailed or delivered in accordance with Section 3.03, Notes called for redemption become irrevocably due and payable on the redemption date at the redemption price. The notice, if mailed or delivered by electronic transmission in a manner herein provided, shall be conclusively presumed to have been given, whether or not the Holder receives such notice. In any case, failure to give such notice or any defect in the notice to the Holder of any Note designated for redemption shall not affect the validity of the proceedings for the redemption of any other Note. Subject to Section 3.05, on and after the redemption date, interest ceases to accrue on Notes or portions of Notes called for redemption.

Section 3.05 Deposit of Redemption or Purchase Price.

(a) No later than 11:00 a.m. (New York City time) on the Business Day prior to the redemption or purchase date, the Issuer shall deposit with the Trustee or with the Paying Agent money sufficient to pay the redemption or purchase price of and accrued and unpaid interest and Additional Amounts, if any, on all Notes to be redeemed or purchased on that date. If a Note is redeemed or purchased on or after a Record Date but on or prior to the related Payment Date, then any accrued and unpaid interest shall be paid to the Holder of record on such Record Date. The Paying Agent shall promptly mail to each Holder whose Notes are to be redeemed or repurchased the applicable redemption or purchase price thereof and accrued and unpaid interest and Additional Amounts, if any, thereon. The Trustee or the Paying Agent shall promptly return to the Issuer any money deposited with the Trustee or the Paying Agent by the Issuer in excess of the amounts necessary to pay the redemption or purchase price of, and accrued and unpaid interest and Additional Amounts, if any, on all Notes to be redeemed or purchased.

(b) If the Issuer complies with the provisions of Section 3.05(a), on and after the redemption or purchase date, interest shall cease to accrue on the Notes called for redemption or purchase. If a Note is redeemed or purchased on or after a Record Date but on or prior to the related Payment Date, then any accrued and unpaid interest to the redemption or purchase date in respect of such Note shall be paid on such redemption or purchase date to the Person in whose name such Note is registered at the close of business on such Record Date. If any Note called for redemption or purchase shall not be so paid upon surrender for redemption or purchase because of the failure of the Issuer to comply with Section 3.05(a), interest shall be paid on the unpaid principal, from the redemption or purchase date until such principal is paid, and, to the extent lawful, on any interest accrued to the redemption or purchase date not paid on such unpaid principal, in each case at the rate provided in the Notes and in Sections 2.12 and Section 4.01.

Section 3.06 Optional Redemption.

(a) The Issuer may, at any time, redeem the Notes, in whole or in part, upon notice pursuant to Section 3.03 at a redemption price equal to 100% of the aggregate principal amount of the Notes *plus* accrued and unpaid interest and Additional Amounts, if any, thereon, if any, to the redemption date. Promptly after the determination thereof, the Issuer shall give the Trustee notice of the redemption price provided for in this Section 3.06(a), and the Trustee shall not be responsible for such calculation.

(b) Except pursuant to clause (a) of this Section 3.06, to the extent applicable, the Notes shall not be redeemable at the Issuer's option.

(c) Any redemption pursuant to this Section 3.06 shall be made pursuant to the provisions of Sections 3.01 through 3.05.

(d) Any redemption notice in connection with this Section 3.06 may, at the Issuer's discretion, be subject to one or more conditions precedent.

Section 3.07 Mandatory Redemption.

The Issuer shall not be required to make mandatory redemption or sinking fund payments with respect to the Notes other than as set forth in Section 6.02.

Section 3.08 Notes Redeemed or Purchased in Part

Upon surrender of a Note that is redeemed or purchased in part, the Issuer will issue and, upon receipt of an Authentication Order from the Issuer, the Trustee will authenticate for the Holder at the expense of the Issuer a new Note equal in principal amount to the unredeemed or unpurchased portion of the Note surrendered; *provided* that each such new Note will be in a principal amount of $2,000 or integral multiple of $1.00 in excess thereof.

ARTICLE 4

COVENANTS

Section 4.01 Payment of Notes.

(a) (1) The Issuer shall pay, or cause to be paid, the principal, premium and Additional Amounts, if any, and interest on the Notes on the dates and in the manner provided in the Notes. Principal, premium and Additional Amounts, if any, and interest shall be considered paid on the date due if the Paying Agent, if other than the Issuer or a Subsidiary, holds as of 11:00 a.m. (New York City) time, on the due date money deposited by the Issuer in immediately available funds and designated for and sufficient to pay the principal, premium and Additional Amounts, if any, and interest then due, *provided* that PIK Interest shall be considered paid on the date due if in accordance with the terms hereof and of the Notes, PIK Notes are issued or and the principal amount of the applicable Global Notes is increased in an amount equal to the amount of the applicable amount of interest pursuant to Section 2.01(a).

(2) Notwithstanding whether the Issuer has elected to pay PIK Interest, beginning on June 30, 2017 and on each Amortization Payment Date thereafter, the Issuer shall make quarterly payments of the Amortization Amount in cash in immediately available funds in lawful money of the United States of America, by wire transfer to the bank account designated by the Trustee or Paying Agent in writing from time to time not later than 11:00 a.m. (New York City time) on such date.

(b) The Issuer shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal and premium, if any, at the rate equal to the then applicable interest rate on the Notes; it shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest (without regard to any applicable grace period) at the same rate on the Notes to the extent lawful.

Section 4.02 Prepayment of Notes

The Issuer may at any time and from time to time prepay any principal amount of the Notes in whole or in part without premium or penalty, pursuant to Article 3.

Section 4.03 Taxes

Each Obligor shall pay, and shall cause each of its Subsidiaries to pay, prior to delinquency, all taxes, assessments and governmental levies except (a) such as are being

contested in good faith and by appropriate negotiations or proceedings or (b) where the failure to effect such payment is not adverse in any material respect to the Holders.

Section 4.04 Stay, Extension and Usury Laws

Each Obligor covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture; and each Obligor (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenant that it shall not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but shall suffer and permit the execution of every such power as though no such law has been enacted.

Section 4.05 Corporate Existence.

Subject to Article 5, each Obligor shall do or cause to be done all things necessary to preserve and keep in full force and effect (1) its corporate or limited liability company existence and the corporate, partnership, limited liability company or other existence of each of its Subsidiaries, in accordance with the respective organizational documents (as the same may be amended from time to time) of such Obligor or any such Subsidiary and (2) the rights (charter and statutory), licenses and franchises of such Obligor and its Subsidiaries; *provided* that such Obligor shall not be required to preserve any such right, license or franchise, or the corporate, partnership, limited liability company or other existence of any of its Subsidiaries, if such Obligor in good faith shall determine that the preservation thereof is no longer desirable in the conduct of the business of such Obligor and its Subsidiaries, taken as a whole.

Section 4.06 Reports and Other Information

(a) Notwithstanding that the Issuer may not be subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, each of the Issuer and the Coke Guarantor shall provide to the Holders the following reports:

(1) within 120 days after the end of each fiscal year, beginning April 30, 2018 for the Issuer's 2017 fiscal year, audited consolidated annual financial statements with all notes related thereto, prepared in accordance with GAAP as in effect on the date thereof; and

(2) within 45 days after the end of each of the first three fiscal quarters of each fiscal year, quarterly consolidated financial statements containing substantially the same information as in their annual financial statements including notes relating thereto, prepared in accordance with GAAP as in effect on the date thereof.

(b) To the extent not satisfied by Section 4.06(a), for so long as any Notes are outstanding, the Issuer shall furnish to Holders and to securities analysts and prospective purchasers of the Notes, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act. The requirements set forth in this Section 4.06(b) and Section 4.06(a) may be satisfied by delivering such information to the Trustee and posting copies

of such information on a website (which may be nonpublic and may be maintained by the Issuer or a third party) to which access will be given to Holders, prospective purchasers of the Notes (which prospective purchasers will be limited to QIBs) or non-U.S. persons (as defined in Regulation S), securities analysts and market making institutions that certify their status as such to the reasonable satisfaction of the Issuer.

(c) In the event that any direct or indirect parent company of the Issuer becomes a Guarantor of the Notes, the Issuer may satisfy its obligations under this Section 4.06 to provide consolidated financial information of the Issuer by furnishing consolidated financial information relating to such parent; *provided* that (1) such financial statements are accompanied by consolidating financial information for such parent, the Issuer and the Subsidiaries in the manner prescribed by the SEC and (2) such parent is not engaged in any business in any material respect other than such activities as are incidental to its ownership, directly or indirectly, of the Capital Stock of the Issuer.

Section 4.07 [Reserved]

Section 4.08 Limitation on Restricted Payments.

Each Obligor shall not, and shall not permit any of its Subsidiaries, directly or indirectly, to

(1) declare or pay any dividend or make any distribution (whether made in cash, securities or other property) on or in respect of its or any of its Subsidiaries' Capital Stock (including any payment in connection with any merger or consolidation involving such Obligor or any of its Subsidiaries), other than dividends or distributions by a Subsidiary, so long as, in the case of any dividend or distribution payable on or in respect of any Capital Stock issued by a Subsidiary that is not a Wholly Owned Subsidiary, the Obligor or the Subsidiary holding such Capital Stock receives at least its pro rata share of such dividend or distribution;

(2) purchase, redeem, retire or otherwise acquire for value, including in connection with any merger or consolidation, any Capital Stock of such Obligor or any direct or indirect parent of such Obligor held by Persons other than such Obligor or a Subsidiary thereof;

(3) make any principal payment on, or purchase, repurchase, redeem, defease or otherwise acquire or retire for value, prior to any scheduled repayment, scheduled sinking fund payment or scheduled maturity, any junior obligations, other than:

(A) Indebtedness of such Obligor owing to and held by any of its Subsidiaries, or Indebtedness of any such Subsidiary owing to and held by such Obligor or any other Subsidiary, permitted under clause (5)) of Section 4.09(b); or

(B) the purchase, repurchase, redemption, defeasance or other acquisition or retirement of junior obligations of any Guarantor purchased in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of purchase, repurchase,

redemption, defeasance or other acquisition or retirement; or

(4) make any Restricted Investment (all such payments and other actions referred to in clauses (1) through (4) of this Section 4.08 (other than any exception thereto) shall be referred to as a "Restricted Payment").

Section 4.09 Limitation on Indebtedness.

(a) Each Obligor shall not, and shall not permit any of its Subsidiaries to, create, incur, assume or permit to exist any Indebtedness (including Acquired Indebtedness) or issue any shares of Disqualified Stock.

(b) The provisions of Section 4.09(a) shall not prohibit the Incurrence of the following Indebtedness:

(1) the incurrence by any Obligor of Indebtedness represented by the Notes and the related Note Guarantees to be issued on the Issue Date;

(2) Indebtedness existing on the date of the original issuance of the Notes hereunder (other than Indebtedness described in clauses (1), (4) and (5);

(3) Indebtedness for the Issuer and its Subsidiaries in an aggregate principal amount not exceeding at any time outstanding (a) $5.0 million or (b) with the consent of the Holders of a majority in principal amount of the Notes then outstanding voting as a single class, $10.0 million;

(4) Indebtedness Incurred by an Obligor or their Subsidiaries in respect of workers' compensation claims, health, disability or other employee benefits or property, casualty or liability insurance, self-insurance obligations, performance, bid, surety and similar bonds and completion Guarantees (not for borrowed money) provided in the ordinary course of business;

(5) Indebtedness of an Obligor owing to and held by any of its Subsidiaries or Indebtedness of a Subsidiary of an Obligor owing to and held by such Obligor or any other Subsidiary of such Obligor; provided, however, (i) any subsequent issuance or transfer of Capital Stock or any other event which results in any such Indebtedness being beneficially held by a Person other than an Obligor or a Subsidiary of an Obligor; and

(i) any sale or other transfer of any such Indebtedness to a Person other than an Obligor or a Subsidiary of an Obligor shall be deemed, in each case under this clause (5) of this Section 4.09(b), to constitute an Incurrence of such Indebtedness by such Obligor or such Subsidiary, as the case may be;

(6) the Incurrence by an Obligor or any of their Subsidiaries of Refinancing Indebtedness that serves to refund or refinance any Indebtedness Incurred as permitted under Section 4.09(a) and clauses (1), (2), (3) and this clause (6) of this Section 4.09(b);

(7) Preferred Stock of a Subsidiary of an Obligor held by such Obligor or any other Subsidiary of such Obligor; provided, however, (A) any subsequent issuance or transfer of Capital Stock or any other event which results in such Preferred Stock being beneficially held by a Person other than such Obligor or a Subsidiary of such Obligor; and (B) any sale or other transfer of any such Preferred Stock to a Person other than such Obligor or a Subsidiary of such Obligor shall be deemed in each case under this clause (7) to constitute an Incurrence of such Preferred Stock by such Subsidiary;

(8) Indebtedness of Persons Incurred and outstanding on the date on which such Person became a Subsidiary of, or was acquired by, or merged into, an Obligor or any Subsidiary of any Obligor (other than Indebtedness Incurred (A) to provide all or any portion of the funds utilized to consummate the transaction or series of related transactions pursuant to which such Subsidiary became a Subsidiary of an Obligor or was otherwise acquired by an Obligor or (B) otherwise in connection with, or in contemplation of, such acquisition); provided, however, that the Incurrence of such Indebtedness does not materially impair the ability of the Issuer or the Guarantors to pay interest, principal and Amortization Amounts on the Notes; and

(9) Indebtedness arising from agreements of an Obligor or a Subsidiary of any Obligor providing for indemnification, adjustment of purchase price or similar obligations, in each case, Incurred or assumed in connection with the disposition of any business or assets of such Obligor or any business, assets or Capital Stock of a Subsidiary of such Obligor, other than Guarantees of Indebtedness Incurred by any Person acquiring all or any portion of such business, assets or a Subsidiary of an Obligor for the purpose of financing such acquisition; provided that:

(A) the maximum aggregate liability in respect of all such Indebtedness shall at no time exceed the gross proceeds including non-cash proceeds (the Fair Market Value of such non-cash proceeds being measured at the time received and without giving effect to subsequent changes in value) actually received by such Obligor and its Subsidiaries in connection with such disposition; and

(B) such Indebtedness is not reflected on the balance sheet of such Obligor or any of its Subsidiaries (contingent obligations referred to in a footnote to financial statements and not otherwise reflected on the balance sheet will not be deemed to be reflected on such balance sheet for purposes of this clause (9)),

and the Incurrence of such Indebtedness does not materially impair the ability of any Obligor to pay interest, principal and Amortization Amounts on the Notes;

(10) Subordinated Indebtedness;

(11) the ML Notes; and

(12) Indebtedness Incurred by the Coke Guarantor in an aggregate principal amount not exceeding at any time outstanding $10.0 million for working capital purposes.

Section 4.10 Limitation on Liens.

Each Obligor shall not, and shall not permit any of their Subsidiaries to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, or assign or sell any income or revenues (including accounts receivable) or rights in respect of any thereof, other than Permitted Liens.

Section 4.11 Future Guarantors.

(a) After the Issue Date, each Obligor shall cause each of its Subsidiaries (other than a Foreign Subsidiary) created or acquired by such Obligor or one or more of its Subsidiaries to execute and deliver to the Trustee a supplemental indenture to the Indenture pursuant to which such Subsidiary shall irrevocably and unconditionally Guarantee, on a joint and several basis, the full and prompt payment of the principal of, premium, if any, and interest on the Notes and all other Obligations of the Issuer under the Notes Documents on a senior secured first-priority basis.

(b) The Obligations of each Guarantor shall be limited to the maximum amount as will, after giving effect to all other contingent and fixed liabilities of such Guarantor and after giving effect to any collections from or payments made by or on behalf of any other Guarantor in respect of the Obligations of such other Guarantor under its Note Guarantee or pursuant to its contribution Obligations under the Indenture, result in the Obligations of such Guarantor under its Note Guarantee not constituting a fraudulent conveyance or fraudulent transfer under federal or state law.

(c) Each Person that becomes a Guarantor after the Issue Date shall also become a party to the applicable Collateral Documents and shall as promptly as practicable execute and deliver such security instruments, financing statements, mortgages, deeds of trust (in substantially the same form as those executed and delivered with respect to the Collateral on the Issue Date or on the date first delivered in the case of Mortgages and certificates and opinions of counsel (to the extent, and substantially in the form, delivered on the Issue Date or the date first delivered in the case of Mortgages (but no greater scope)) as may be necessary to vest in the Collateral Agent a perfected first-priority security interest (subject to Permitted Liens) in properties and assets that constitute Collateral as security for the Notes or the Note Guarantees and as may be necessary to have such property or asset added to the applicable Collateral as required under the Collateral Documents and the Indenture, and thereupon all provisions of the Indenture relating to the Collateral shall be deemed to relate to such properties and assets to the same extent and with the same force and effect.

(d) Each Note Guarantee shall be released in accordance with the provisions of Section 11.06.

Section 4.12 Limitation on Restrictions on Distribution From Subsidiaries

(a) No Obligor shall, or shall permit any of its Subsidiaries to, directly or indirectly, create or otherwise cause or permit to exist or become effective any consensual encumbrance or consensual restriction on the ability of such Obligor or any such Subsidiary to:

(1) pay dividends or make any other distributions on its Capital Stock to an Obligor or any of its Subsidiaries, or with respect to any other interest or participation in, or measured by, its profits, or pay any Indebtedness or other obligations owed to an Obligor or any Subsidiary of an Obligor (it being understood that the priority of any Preferred Stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on Common Stock shall not be deemed a restriction on the ability to make distributions on Capital Stock);

(2) make any loans or advances to an Obligor or any Subsidiary (it being understood that the subordination of loans or advances made to an Obligor or any Subsidiary to other Indebtedness Incurred by such Obligor or any such Subsidiary shall not be deemed a restriction on the ability to make loans or advances); or

(3) sell, lease or transfer any of its property or assets to an Obligor or any Subsidiary of any Obligor (it being understood that such transfers shall not include any type of transfer described in clause (1) or (2) of this Section 4.13(a)).

(b) Section 4.12(a) shall not prohibit encumbrances or restrictions existing under or by reason of:

(1) contractual encumbrances or restrictions pursuant to the Collateral Documents and related documentation and other agreements or instruments in effect at or entered into on the Issue Date;

(2) this Indenture, the Notes and the Note Guarantees;

(3) any agreement or other instrument of a Person acquired by an Obligor or any of its Subsidiaries in existence at the time of such acquisition (but not created in contemplation thereof), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person and its Subsidiaries, or the property or assets of the Person and its Subsidiaries, so acquired (including after-acquired property);

(4) any amendment, restatement, modification, renewal, supplement, refunding, replacement or refinancing of an agreement referred to in clauses (1), (2) or (3) of this Section 4.12(b) or this clause (4) of this Section 4.12(b); provided, however, that such amendments, restatements, modifications, renewals, supplements, refundings, replacements or refinancings are, in the good faith determination of the Senior Management of the applicable Obligor, no more restrictive than the encumbrances and restrictions contained the agreements referred to in clauses (1), (2) or (3) of this Section 4.12(b) on the Issue Date or the date an applicable Subsidiary became a Subsidiary of any such Obligor or was merged into a Subsidiary of any such Obligor, whichever is applicable;

(5) any customary provisions in leases, subleases or licenses and other agreements entered into by an Obligor or any Subsidiary of such Obligor in the ordinary course of business;

(6) encumbrances or restrictions arising or existing by reason of applicable law or any applicable rule, regulation or order; or

(7) Indebtedness Incurred or Preferred Stock issued by a Subsidiary of an Obligor permitted to be Incurred pursuant to Section 4.09 that, in the good faith determination of the Board of Directors of the applicable Obligor, are not more restrictive, taken as a whole, than those applicable to such Obligor in this Indenture on the Issue Date (which results in encumbrances or restrictions at a Subsidiary level comparable to those applicable to such Obligor); provided that such encumbrances or restrictions shall not materially affect the Issuer's or the Guarantor's ability to make anticipated principal and interest payments on the Notes (in the good faith determination of the Board of Directors of such Obligor).

Section 4.13 Limitations on Investments, Loans, Advances, Guarantees and Acquisitions.

No Obligor shall, or shall permit any of its Subsidiaries to, purchase, hold or acquire (including pursuant to any merger with any Person that was not a Subsidiary or otherwise a Guarantor prior to such merger) any Capital Stock, evidences of indebtedness or other securities (including any option, warrant or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, Guarantee any obligations of, or make or permit to exist any investment or any other interest in, any other Person, or purchase or otherwise acquire (in one transaction or a series of transactions) any assets of any other Person constituting a business unit, except Permitted Investments. and investments by such Obligor existing on the date of the original issuance of the Notes hereunder in the Capital Stock of its Subsidiaries.

Section 4.14 Transactions with Affiliates

(a) No Obligor shall, or shall permit any of its Subsidiaries to, directly or indirectly, enter into or conduct any transaction (including the purchase, sale, lease or exchange of any property or asset or the rendering of any service) with any Affiliate of such Obligor (an "Affiliate Transaction"), other than when:

(1) the terms of such Affiliate Transaction are no less favorable to such Obligor or such Subsidiary, as the case may be, than those that could have been obtained by such Obligor or such Subsidiary in a comparable transaction at the time of such transaction in arms' length dealings with a Person that is not an Affiliate;

(2) in the event such Affiliate Transaction involves an aggregate consideration in excess of $1.0 million, the terms of such transaction have been approved by a majority of the members of the Board of Directors of such Obligor and by a majority of the members of such Board of Directors having no personal stake in such transaction, if any (and such majority determines that such Affiliate Transaction satisfies the criteria in clause (1) of this Section 4.14(a)); and

(3) in the event such Affiliate Transaction involves an aggregate consideration in excess of $2.0 million, such Obligor has received a written opinion from an Independent Financial Advisor stating that such Affiliate Transaction is fair to such Obligor or such Subsidiary from a financial point of view or stating that the terms are not

materially less favorable than those that could have been obtained by such Obligor or such Subsidiary in a comparable transaction at such time on arms' length basis from a Person that is not an Affiliate.

(b) Section 4.14(a) shall not apply to:

(1) any transaction between the Issuer and the Coke Guarantor or between any Obligor and its Subsidiaries or between the Issuer and the Subsidiaries of the Coke Guarantor or between the Coke Guarantor and the Subsidiaries of the Issuer, and any Guarantees issued by an Obligor or a Subsidiary of any Obligor for the benefit of any other Obligor or any other Subsidiary of any Obligor, as the case may be, in accordance with Section 4.09;

(2) Restricted Payments permitted to be made pursuant to Section 4.08 or Permitted Investments;

(3) any agreement as in effect as of the Issue Date, as these agreements may be amended, modified, supplemented, extended or renewed from time to time, so long as any such amendment, modification, supplement, extension or renewal is not more disadvantageous to the Holders in any material respect in the good faith judgment of the Board of Directors of the applicable Obligor, when taken as a whole, than the terms of the agreements in effect on the Issue Date; provided that such amendment, modification, supplement, extension or renewal shall not materially affect the Issuer's or Guarantor's ability to make anticipated principal and interest payments on the Notes (in the good faith determination of the Board of Directors of such Obligor); or

(4) any agreement between any Person and an Affiliate of such Person existing at the time such Person is acquired by or merged into an Obligor or a Subsidiary of any Obligor; provided that such agreement was not entered into in contemplation of such acquisition or merger, and any amendment thereto, so long as any such amendment is not disadvantageous to the Holders in the good faith judgment of the Board of Directors of the applicable Obligor, when taken as a whole, as compared to the applicable agreement as in effect on the date of such acquisition or merger; provided that such agreement or any amendment thereof shall not materially affect such Obligor's ability to make anticipated principal and interest payments on the Notes (in the good faith determination of the Board of Directors of such Obligor).

Section 4.15 Repurchase Upon Event of Default

(a) If an Event of Default occurs and is continuing, the Issuer shall redeem, in accordance with Section 6.02(b), all of the Notes at a redemption price in cash equal to 100% of the aggregate principal amount of the Notes outstanding plus accrued and unpaid interest (including additional interest to be paid following an Event of Default as set forth in Section 2.12), and interest upon overdue interest, if any (the "Event of Default Redemption Price"), to the date of redemption (the "Event of Default Redemption Payment Date"), subject to the right of Holders of record on a Record Date to receive any interest due on such Event of Default Redemption Payment Date (the redemption described in this Section 4.15(a), an "Event of

Default Redemption"). For the avoidance of doubt, each of the Issuer Redemption Date, the Guarantor Redemption Date and the Clarke Redemption Date (each as defined in Section 6.02(b)) shall be deemed an Event of Default Redemption Payment Date, as applicable.

(1) Within five Business Days following any Acceleration Effective Date, the Issuer shall mail a notice of the Acceleration Effective Date and of the Event of Default giving rise to such Acceleration Effective Date to each Holder at such Holder's registered address or otherwise deliver notice in accordance with the applicable procedures of the Depositary, with a copy to the Trustee (an "Acceleration Effective Date Notice"), stating:

(A) the paragraph or subparagraph or Section pursuant to which such Event of Default has occurred; and

(B) that the Notes have become immediately due and payable, subject to the extension and procedure set forth in Section 6.02(b), if applicable.

(b) If the Issuer is obligated to deliver an Event of Default Redemption Notice pursuant to Section 6.02(b), the Issuer shall, subject to the timing set forth in Section 6.02(b), deliver such Event of Default Redemption Notice to the Trustee and to each Holder at such Holder's registered address or otherwise deliver notice in accordance with the applicable procedures of the Depositary, identifying the Notes to be redeemed (including CUSIP and ISIN number, if applicable) and stating:

(1) the paragraph or subparagraph or Section pursuant to which an Event of Default has occurred and referring to any Acceleration Effective Date Notice previously delivered with respect to such Event of Default;

(2) that the Notes have become immediately due and payable;

(3) that an Event of Default Redemption is being made pursuant to this Section 4.15, and that all Notes shall be redeemed by the Issuer at a purchase price in cash equal to the Event of Default Redemption Price (subject to the right of Holders of record on the applicable Record Date to receive interest due on the Event of Default Redemption Payment Date), and setting forth the calculation of the Event of Default Redemption Price;

(4) the Event of Default Redemption Payment Date;

(5) that Notes will remain outstanding and continue to accrue interest until such time as the entire aggregate principal outstanding Notes have been redeemed;

(6) the name and address of the Paying Agent, and that Holders shall be required to surrender such Notes to the specified Paying Agent at the specified address prior to the close of business on the Event of Default Redemption Payment Date;

(7) that no representation is made as to the correctness or accuracy of the CUSIP or ISIN number, if any, listed in the Acceleration Effective Date Notice or printed on the Notes; and

(8) the other procedures, as determined by the Issuer, consistent with this Section 4.15, that a Holder must follow.

Each of the Acceleration Effective Date Notice and the Event of Default Redemption Notice (together, each a "Section 4.15 Notice"), respectively, if mailed or otherwise delivered in a manner herein provided, shall be conclusively presumed to have been given, whether or not the Holder receives such Section 4.15 Notice. If (A) a Section 4.15 Notice is mailed in a manner herein provided and (B) any Holder fails to receive such Section 4.15 Notice or a Holder receives such Section 4.15 Notice but it is defective, such Holder's failure to receive such Section 4.15 Notice or such defect shall not affect the validity of the proceedings for the purchase of the Notes as to all other Holders that properly received such Section 4.15 Notice without defect.

(c) No later than 11:00 a.m. (New York City time) on the Business Day prior to the Event of Default Redemption Payment Date, the Issuer shall, to the extent lawful, deposit with the Paying Agent an amount equal to the Event of Default Redemption Price in respect of all Notes. The Trustee or Paying Agent shall promptly return to the Issuer any cash in U.S. dollars, deposited with the Trustee or Paying Agent, as applicable, by the Issuer in excess of the amounts necessary to pay the Event of Default Redemption Price on all Notes to be redeemed.

(d) On the Event of Default Redemption Payment Date, the Issuer shall, to the extent lawful, deliver or cause to be delivered to the Trustee for cancellation all Notes together with an Officers' Certificate stating the aggregate principal amount of Notes purchased by the Issuer in accordance with this Section 4.15 represents the total aggregate principal amount of Notes outstanding.

(e) The Paying Agent shall promptly pay (or otherwise deliver in accordance with the applicable procedures of the Depositary) to each Holder of Notes the Event of Default Redemption Price for such Notes.

(f) If the Event of Default Redemption Payment Date is on or after a Record Date and on or before the related Payment Date, any accrued and unpaid interest to the Event of Default Redemption Payment Date shall be paid on the Event of Default Redemption Payment Date to the Person in whose name a Note is registered at the close of business on such Record Date.

(g) The Issuer shall not be required to make an Event of Default Redemption upon an Event of Default if a third party consummates the Event of Default Redemption in the manner, at the times and otherwise in compliance with the requirements set forth in this Section 4.15 applicable to an Event of Default Redemption made by the Issuer and purchases all Notes.

(h) If the Issuer complies with the provisions of Section 4.15, on and after the Event of Default Redemption Payment Date, interest shall cease to accrue on all redeemed Notes. If any Note called for redemption by an Acceleration Effective Date Notice shall not be so paid upon surrender for redemption because of the failure of the Issuer to comply with Section 4.15(b), interest shall be paid on the unpaid principal, from the Event of Default Redemption Payment Date until such principal is paid, and, to the extent lawful, on any interest accrued to the

Event of Default Redemption Payment Date not paid on such unpaid principal, in each case at the rate provided in the Notes and in Sections 2.12 and Section 4.01.

ARTICLE 5

SUCCESSORS

Section 5.01 Merger, Consolidation or Sale of Assets.

No Obligor shall, or shall permit any of its Subsidiaries to, merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or sell, transfer, lease or otherwise dispose of (in one transaction or in a series of transactions) (x) all or any substantial part of its assets, or (y) all or substantially all of the Capital Stock of any of its Subsidiaries (in each case, whether now owned or hereafter acquired), or liquidate or dissolve, except that

(1) in the case of any sale, transfer, lease or other disposition of assets which is not a substantial part of its assets, the net cash proceeds from such transaction are equal or greater than the depreciated value of such asset and such net proceeds, within five (5) Business Days after receipt shall be either deposited in a segregated account to be used for the payment of Amortization Amounts or to purchase replacement assets which are useful in the business; and

(2) a merger or combination shall be permitted so long as, after giving effect thereto: (i) the value of the Collateral securing the Obligations and the Note Guarantees by the Guarantors of the Obligations are not materially reduced, (ii) the Liens in favor of Trustee or the Collateral Agent, as applicable, for the benefit of the Holders under the Notes Documents are not materially impaired, (iii) there is no material and adverse effect on the material rights and remedies of the Trustee, the Collateral Agent and/or the Holders under any Notes Document, including the legality, validity, binding effect or enforceability of any Notes Document, (v) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing and (vi) if the Obligor or the applicable Subsidiary is not the entity surviving such merger or combination (any such Person, the "Successor Company"), then the Successor Company shall be an entity organized or existing under the laws of the United States of America, any State or territory thereof, the District of Columbia, any member state of the European Union on January 1, 2004 (other than Greece), Canada or any province of Canada, Norway, Switzerland, Guernsey or Jersey and shall expressly assume all of the Obligations of its predecessor under this Indenture and any other obligations under the other Notes Document, including the obligation to pay Additional Amounts with respect to any jurisdiction in which it is organized or resident for tax purposes or through which it makes payments, and such Obligor shall, or cause such Subsidiary to, have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, winding up or disposition, and such supplemental indenture, if any, comply with this Indenture.

ARTICLE 6

DEFAULTS AND REMEDIES

Section 6.01 Events of Default.

(a) Each of the following is an "Event of Default":

(1) default in any payment of interest (including Additional Amounts) or an Amortization Amount on any Note when due, continued for three (3) days;

(2) default in the payment of principal or premium, if any, on any Note when due;

(3) failure by the Issuer or any Guarantor to comply with its obligations under Section 5.01;

(4) failure by the Issuer or any Guarantor to comply for 30 days after notice as provided below with any of its obligations under Article 4 (other than Sections 4.08, 4.09, 4.10, 4.12, 4.13, 4.14 and 4.15) and Article 5 (in each case, other than (A) a failure to purchase Notes which constitutes an Event of Default under Section 6.01(a)(2), (B) a failure to comply with Section 5.01 which constitutes an Event of Default under Section 6.01(a)(3) or (C) a failure to comply with Section 9.07, which constitutes an Event of Default under Section 6.01(a)(6));

(5) failure by an Obligor or any of its Subsidiaries to comply with its obligations under Sections 4.08, 4.09, 4.10, 4.12, 4.13, 4.14 and 4.15;

(6) failure by the Issuer or any Guarantor to comply for 60 days after notice as provided below with its other agreements contained in this Indenture, the Notes, the Note Guarantees and the Collateral Documents;

(7) default under any mortgage, indenture or instrument under which there is issued or by which there is secured or evidenced any Indebtedness for money borrowed by any Obligor or any of its Subsidiaries (or the payment of which is Guaranteed by any Obligor or any of its Subsidiaries), other than Indebtedness owed to any Obligor or any of its Subsidiaries, whether such Indebtedness or Guarantee now exists or is created after the Issue Date, which default:

(A) is caused by a failure to pay principal of, or interest or premium, if any, on such Indebtedness prior to the expiration of the grace period provided in such Indebtedness; or

(B) results in the acceleration of such Indebtedness prior to its maturity;

and, in each case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a payment

default or the maturity of which has been so accelerated, aggregates $2.5 million or more;

(8) failure by any Obligor or any of its Subsidiaries to pay final judgments aggregating in excess of $5.0 million (net of any amounts that a reputable and creditworthy insurance company has acknowledged liability for in writing), which judgments are not paid, discharged or stayed for a period of 60 days or more after such judgment becomes final;

(9) (i) any Obligor or any of its Subsidiaries, pursuant to or within the meaning of the Bankruptcy Law:

(A) commences proceedings to be adjudicated bankrupt or insolvent;

(B) consents to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking an arrangement of debt, reorganization, dissolution, winding up or relief under applicable Bankruptcy Law;

(C) consents to the appointment of a receiver, interim receiver, receiver and manager, liquidator, assignee, trustee, sequestrator or other similar official of it or for all or substantially all of its property;

(D) makes a general assignment for the benefit of its creditors;

(E) is unable or admits in writing its inability to pay its debts as they mature;

(F) generally is not paying its debts as they become due;

(ii) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(A) is for relief against any Obligor or any of its Subsidiaries in a proceeding in which any such Obligor or any such Subsidiary is to be adjudicated bankrupt or insolvent;

(B) appoints a receiver, interim receiver, receiver and manager, liquidator, assignee, trustee, sequestrator or other similar official of any Obligor or any of their Subsidiaries, or for all or substantially all of the property of any Obligor or any of its Subsidiaries; or

(C) orders the liquidation, dissolution or winding up of any Obligor or any of its Subsidiaries;

and the order or decree remains unstayed and in effect for 60 consecutive days;

(10) any Note Guarantee or Collateral Document ceases to be in full force and effect (except as contemplated by the terms of this Indenture) or is declared null and void

in a judicial proceeding or any Guarantor or the Issuer denies or disaffirms its obligations under this Indenture, its Note Guarantee or the Collateral Documents, or contests the validity or enforceability of any part of this Indenture or any other Notes Document;

(11) the occurrence of a Change of Control other than a Permitted Change of Control;

(12) this Indenture or any other Notes Document shall for any reason cease to create, or any Lien purported to be created by such Notes Document shall be asserted in writing by the Issuer or any Guarantor not to be, a valid and perfected first priority Lien on and security interest in any portion of the Collateral purported to be covered thereby, other than Liens explicitly permitted hereunder; or with respect to any Collateral having a fair market value in excess of $2.5 million, individually or in the aggregate, (A) the failure of the security interest with respect to such Collateral under the Collateral Documents, at any time, to be in full force and effect for any reason other than in accordance with their terms and the terms of this Indenture, which failure continues for 60 days or (B) the assertion by the Issuer or any Guarantor, in any pleading in any court of competent jurisdiction, that any such security interest is invalid or unenforceable; or

(13) (i) Any Clarke Guarantor is criminally indicted or convicted of a felony, (ii) the death of Thomas Matthew Clarke or (iii) a conservator shall have been appointed to oversee the affairs of Thomas Matthew Clarke;

provided, *however*, that a Default under clauses (4) and (6) of this Section 6.01(a) shall not constitute an Event of Default until the Trustee notifies the Issuer or the Holders of at least 25% in principal amount of the then outstanding Notes notify the Issuer and the Trustee of the Default and the Issuer does not cure such Default within the time specified in clauses (4) and (6) of this Section 6.01(a) after receipt of such notice.

Section 6.02 Acceleration.

(a) (1) If an Event of Default occurs and is continuing, the Trustee or the Holders of at least 25% in aggregate principal amount of outstanding Notes by written notice to the Issuer (and the Trustee, if given by the Holders) may declare the principal of, premium and Additional Amounts, if any, and accrued and unpaid interest, if any, on all the Notes to be due and payable and upon such declaration, shall be due and payable immediately.

(2) If an Event of Default under clauses (1), (2) or (9) of Section 6.01(a) occurs and is continuing, the principal, premium, if any, and accrued and unpaid interest, if any, on all the Notes shall become and be immediately due and payable, without any declaration or other act on the part of the Trustee or any Holders (such date in the case of this paragraph and the paragraph above, the "Acceleration Effective Date").

(b) Notwithstanding Section 6.02(a), if on or after an Acceleration Effective Date arising out of an Event of Default other than a Specified Event of Default the Issuer delivers to the Trustee an Officer's Certificate certifying that the Issuer does not have sufficient cash and Cash Equivalents to pay all amounts then due and owing to the Holders on the Notes, including the Event of Default Redemption Price, then the Issuer, the Coke Guarantor and the

Clarke Guarantors shall not be permitted to make any payments to the Mechanics Lienholders, and:

(1) the Issuer shall have 180 days (a "Standstill Period") from and including the Acceleration Effective Date (such 180th day, the "First Standstill Expiration Date") to sell, transfer, lease or otherwise dispose of sufficient assets to pay the Event of Default Redemption Price; *provided* that if during such Standstill Period the Issuer uses commercially reasonable efforts to sell, transfer, lease or otherwise dispose of assets to pay the Event of Default Redemption Price, none of the Trustee, the Collateral Agent or any Holder shall be permitted to take any enforcement action against the Collateral, and at no time thereafter prior to the last day for the Issuer to deliver an Issuer Redemption Failure Notice, may any of the Trustee, Collateral Agent or any Holder take an enforcement action or pursue any other remedy against the Issuer, the Coke Guarantor, the Clarke Guarantors or the Collateral.

(A) If, on or prior to the First Standstill Expiration Date, the Issuer determines it shall not have sufficient cash and Cash Equivalents to pay the Event of Default Redemption Price on the date falling five Business Days after the First Standstill Expiration Date (the "Issuer Redemption Date"), then the Issuer shall immediately, and no later than four Business Days prior to the Issuer Redemption Date, furnish an Officers' Certificate to the Trustee certifying that the Issuer is unable to redeem the Notes in full pursuant to Section 4.15. Upon receipt of such Officer's Certificate, the Trustee shall furnish a copy thereof to the Holders in accordance with the applicable procedures of the Depositary (an "Issuer Redemption Failure Notice").

(B) If at any time, and from time to time, prior to the First Standstill Expiration Date, the Issuer has sufficient cash and Cash Equivalents to redeem, pursuant to Section 4.15, no less than $2.0 million aggregate principal amount of Notes outstanding, then the Issuer shall promptly deposit with the Trustee an amount of cash equal to the Event of Default Redemption Price for the maximum aggregate principal amount of the Notes for which the Issuer has sufficient cash or Cash Equivalents, and shall redeem such Notes pursuant to Sections 4.15 and 6.13.

(2) Upon the delivery of an Issuer Redemption Failure Notice, the Coke Guarantor shall have a Standstill Period, from and including the date of such notice (the last day of such Standstill Period, the "Second Standstill Expiration Date"), to sell, transfer, lease or otherwise dispose of the Coke Plant, or such other assets as it determines, to pay any outstanding unpaid amount of the Event of Default Redemption Price (including defaulted interest pursuant to Section 2.12) (the "Deficiency Amount"); *provided* that if during such Standstill Period the Coke Guarantor uses commercially reasonable efforts to sell, transfer, lease or otherwise dispose of the Coke Plant, or such other assets as it determines, to pay the Deficiency Amount, none of the Trustee, the Collateral Agent or any Holder shall be permitted to take an enforcement action against the Collateral, and at no time thereafter prior to the last day for the Coke Guarantor to deliver a Coke Redemption Failure Notice, may any of the Trustee, Collateral Agent or

any Holder take an enforcement action or pursue any other remedy against the Coke Guarantor or the Clarke Guarantors or the Collateral.

(A) If, on or prior to the Second Standstill Expiration Date, the Coke Guarantor determines it shall not have sufficient cash and Cash Equivalents to pay the Deficiency Amount on the date falling five Business Days after the Guarantor Notice Expiration Date (the "Guarantor Redemption Date"), then the Issuer shall promptly, and no later than four Business Days prior to the Guarantor Redemption Date, furnish an Officer's Certificate to the Trustee certifying that the Issuer is unable to redeem the Notes pursuant to Section 4.15. Upon receipt of such Officer's Certificate, the Trustee shall furnish a copy thereof to the Holders in accordance with the applicable procedures of the Depositary (a "Guarantor Redemption Failure Notice").

(B) If at any time, and from time to time, prior to the Second Standstill Expiration Date, the Coke Guarantor has sufficient cash and Cash Equivalents to redeem, pursuant to Section 4.15, no less than $2.0 million aggregate principal amount of Notes at the Event of Default Redemption Price, then the Coke Guarantor shall promptly deposit with the Trustee an amount of cash equal to the Event of Default Redemption Price for the maximum aggregate principal amount of the Notes for which the Issuer has sufficient cash or Cash Equivalents into the Collateral Account and shall redeem such Notes pursuant to Sections 4.15 and 6.13.

(3) Upon the delivery of a Guarantor Redemption Failure Notice, the Clarke Guarantors shall have a Standstill Period, from and including the date of such notice (the last day of such Standstill Period, the "Third Standstill Expiration Date" and, together with the First Standstill Expiration Date and the Second Standstill Expiration Date, each an "Expiration Date"), to sell, transfer, lease or otherwise dispose of assets to pay the Deficiency Amount; *provided* that if Standstill Period the Clarke Guarantors use commercially reasonable efforts to sell, transfer, lease or otherwise dispose of assets to pay the Deficiency Amount, none of the Trustee, the Collateral Agent or any Holder shall be permitted to take an enforcement action against the Collateral, and at no time thereafter prior to the last day for the Clarke Guarantors to deliver a Clarke Redemption Failure Notice, may any of the Trustee, Collateral Agent or any Holder take an enforcement action or pursue any other remedy against the Clarke Guarantors.

(A) If on or prior to the Third Standstill Expiration Date, the Clarke Guarantors determine they shall not have sufficient cash and Cash Equivalents necessary to pay the Deficiency Amount on the date falling five Business Days after the Third Standstill Expiration Date (the "Clarke Redemption Date"), then the Issuer shall promptly, and no later than four Business Days prior to the Clarke Redemption Date, furnish an Officer's Certificate to the Trustee certifying that the Issuer is unable to redeem the Notes pursuant to Section 4.15. Upon receipt of such Officer's Certificate, the Trustee shall furnish a copy thereof to the Holders in accordance with the applicable procedures of the Depositary (a "Clarke Redemption Failure Notice" and, together with the Issuer Redemption Failure

Notice and the Guarantor Redemption Failure Notice, each a "Redemption Failure Notice") and furnish notice of such in accordance with the applicable procedures of the Depositary, with a copy to the Trustee, upon receipt of which the Trustee may pursue any remedy pursuant to Section 6.03.

(B) If at any time, and from time to time, prior to the Third Standstill Expiration Date, the Clarke Guarantors have sufficient cash and Cash Equivalents to redeem, pursuant to Section 4.15, no less than $2.0 million aggregate principal amount of Notes at the Event of Default Redemption Price, then the Clarke Guarantors shall promptly deposit with the Trustee an amount of cash equal to the Event of Default Redemption Price for the maximum aggregate principal amount of the Notes for which the Issuer has sufficient cash or Cash Equivalents and shall redeem such Notes pursuant to Sections 4.15 and 6.13.

For purposes of Section 6.02(b)(1)(B), 6.02(b)(2)(B) and 6.02(b)(3)(B), the Issuer, the Coke Guarantor and the Clarke Guarantors shall provide the Trustee with their cash and Cash Equivalents on each Interest Payment Date following an Event of Default.

(c) If an Event of Default under Section 6.01(a)(9) occurs and is continuing, the Standstill Period for the entity subject of such Event of Default shall end and the Standstill Period for the next entity pursuant to Section 6.02(b) shall begin.

(d) If, at any time, (x) a Specified Event of Default has occurred and is continuing or (y) any Deficiency Amount remains outstanding following the Third Standstill Expiration Date, then the Trustee and the Holders may pursue any available remedy to collect the payment of principal, premium, if any, and interest due on the Notes, or to enforce the performance of any provision of the Notes or this Indenture.

(e) The Holders of a majority in principal amount of the outstanding Notes may waive all past Events of Default (except with respect to nonpayment of principal, premium or interest) and rescind any acceleration with respect to the Notes and its consequences if (1) such rescission would not conflict with any judgment or decree of a court of competent jurisdiction, (2) all existing Events of Default, other than the nonpayment of the principal of, premium, if any, and interest on the Notes that have become due solely by such declaration of acceleration, have been cured or waived and (3) there has been deposited with the Trustee a sum sufficient to pay its fees, expenses and indemnities in connection with such Event of Default, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel and all other amounts payable to the Trustee under Section 7.07.

(f) For the avoidance of doubt, following an Event of Default, and until such Event of Default is cured or all amounts due and outstanding under this Indenture have been paid, the Issuer shall not be permitted to pay any interest as PIK Interest.

(g) If the Trustee has not received (x) an Acceleration Effective Date Notice within five Business Days following an Acceleration Effective Date or (y) a Redemption Failure Notice within ten Business Days following any Notice Expiration Date, the Trustee, the Collateral Agent and the Holders may pursue any available remedy to collect the payment of

principal, premium, if any, and interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture.

(h) Notwithstanding Section 6.02(b), if upon acceleration of the Notes any Obligor or Clarke Guarantor shall make any payment to the Mechanics Lienholders, pursuant to the Mechanics Lien Royalty Agreements, then Section 6.02(b) shall be of no force and effect and the Trustee and the Holders may pursue any available remedy to collect the payment of principal, premium, if any, and interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture.

(i) All proceeds from any sale, transfer, lease or disposition of assets pursuant to Section 6.02(b) shall be deposited no later than ten Business Days after receipt thereof into the Collateral Account for application in accordance with Sections 4.15, 6.02(b) and Section 6.13 (and subject to Section 10.08). If the Issuer or any Guarantor fails to deposit such proceeds within five Business Days, then Section 6.02(b) shall be of no force and effect and the Trustee and the Holders may pursue any available remedy to collect the payment of principal, premium, if any, and interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture.

Section 6.03 Other Remedies.

(a) If a Specified Event of Default has occurred and is continuing, or if at any time following an Event of Default any Deficiency Amount has not been fully-paid to the Trustee or the Collateral Agent by the Issuer or any of the Guarantors, then the Trustee and the Holders may, subject to Section 6.02(b), pursue any available remedy to collect such Deficiency Amount.

(b) The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder of a Note in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. All remedies are cumulative to the extent permitted by law.

Section 6.04 Waiver of Past Defaults.

The Holders of a majority in principal amount of the outstanding Notes by written notice to the Trustee may on behalf of all Holders waive any existing Default and its consequences hereunder, except:

(1) a continuing Default in the payment of the principal, premium, if any, or interest on any Note held by a non-consenting Holder; and

(2) a Default with respect to a provision that under Section 9.02 cannot be amended without the consent of each Holder affected,

provided that, subject to Section 6.02, the Holders of a majority in principal amount of the then outstanding Notes may rescind an acceleration and its consequences, including any related payment default that resulted from such acceleration. Upon any such waiver, such Default shall

cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture, but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

Section 6.05 Control by Majority.

The Holders of a majority in principal amount of the outstanding Notes may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or the Collateral Agent of exercising any trust or power conferred on the Trustee or the Collateral Agent. However, the Trustee and the Collateral Agent, as the case may be, may refuse to follow any direction that conflicts with law, this Indenture, the Notes, any Note Guarantee or the Collateral Documents, or that the Trustee or the Collateral Agent determines in good faith is unduly prejudicial to the rights of any other Holder or that would involve the Trustee or the Collateral Agent in personal liability.

Section 6.06 Limitation on Suits.

Subject to Section 6.07, no Holder may pursue any remedy with respect to this Indenture or the Notes unless:

(1) such Holder has previously given the Trustee written notice that an Event of Default is continuing;

(2) the Holders of at least 25% in principal amount of the then outstanding Notes have requested the Trustee to pursue the remedy;

(3) such Holders have offered the Trustee security or indemnity reasonably satisfactory to the Trustee against any loss, liability or expense;

(4) the Trustee has not complied with such request within 60 days after the receipt of the request and the offer of security or indemnity; and

(5) the Holders of a majority in principal amount of the then outstanding Notes have not given the Trustee a direction that, in the opinion of the Trustee, is inconsistent with such request within such 60-day period.

A Holder may not use this Indenture to prejudice the rights of another Holder or to obtain a preference or priority over another Holder (it being understood that the Trustee does not have an affirmative duty to ascertain whether or not such actions or forbearances are prejudicial to such Holders).

Section 6.07 Rights of Holders to Receive Payment.

Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of principal, premium, if any, and interest on its Note, on or after the respective due dates expressed or provided for in such Note, or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder.

Section 6.08 Collection Suit by Trustee.

If an Event of Default specified in Section 6.01(a)(1) or (2) occurs and is continuing, subject to Section 6.02(b), the Trustee may recover judgment in its own name and as trustee of an express trust against the Issuer and any other obligor on the Notes for the whole amount of principal, premium, if any, and interest remaining unpaid on the Notes, together with interest on overdue principal and, to the extent lawful, interest and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee and its agents and counsel.

Section 6.09 Restoration of Rights and Remedies.

If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceedings, the Issuer, the Guarantors, the Trustee and the Holders shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding has been instituted.

Section 6.10 Rights and Remedies Cumulative.

Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Notes in Section 2.07, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy are, to the extent permitted by law, cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 6.11 Delay or Omission Not Waiver.

No delay or omission of the Trustee or of any Holder to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.

Section 6.12 Trustee May File Proofs of Claim.

The Trustee may file proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Holders of the Notes allowed in any judicial proceedings relative to the Issuer (or any other obligor upon the Notes, including the Guarantors), its creditors or its property and is entitled and empowered to participate as a member in any official committee of creditors appointed in such matter and to collect, receive and distribute any money or other property

payable or deliverable on any such claims. Any custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee and its agents and counsel, and any other amounts due the Trustee or the Collateral Agent under Section 7.07. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee or the Collateral Agent under Section 7.07 out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 6.13 Priorities.

(a) Application of Proceeds. If an Event of Default shall have occurred and be continuing, the Trustee or Paying Agent, as applicable, shall apply all or any part of proceeds constituting Collateral, any proceeds of the Guarantee set forth in Article 11 and any proceeds of the Clarke Guaranty, in payment of the Obligations in the following order:

(1) to pay incurred and unpaid fees, expenses and indemnities of the Trustee and/or each Agent under the Notes Documents, including all amounts due under Section 7.07;

(2) Second, to the Trustee and/or Paying Agent, for application by it towards payment of amounts then due and owing and remaining unpaid in respect of the Obligations to the Holders, *pro rata* among the Holders according to the amounts of the Obligations then due and owing and remaining unpaid to the Holders;

(3) Third, to the Trustee and/or Paying Agent, for application by it towards prepayment of the Obligations, *pro rata* among the Holders according to the amounts of the Obligations then held by the Holders; and

(4) Fourth, any balance remaining after the Obligations shall have been paid in full shall be paid over to or at the direction of the Issuer or as a court of competent jurisdiction may otherwise direct.

The Trustee may fix a record date and payment date for any payment to Holders pursuant to this Section 6.13. Promptly after any record date is set pursuant to this Section 6.13, the Trustee shall cause notice of such record date and payment date to be given to the Issuer and to each Holder in the manner set forth in Section 13.01.

Section 6.14 Undertaking for Costs.

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as a Trustee, a court in its discretion may require the filing by any party litigant in such suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.14 does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.07, or a suit by Holders of more than 10% in aggregate principal amount of the outstanding Notes.

ARTICLE 7

TRUSTEE

Section 7.01 Duties of Trustee.

(a) If an Event of Default has occurred and is continuing of which a Responsible Officer of the Trustee has received written notice, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) Except during the continuance of an Event of Default of which a Responsible Officer of the Trustee has received written notice:

(1) the duties of the Trustee shall be determined solely by the express provisions of this Indenture and the Trustee need perform only those duties that are specifically set forth in this Indenture and no others, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(2) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).

(c) The Trustee may not be relieved from liabilities for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(1) this paragraph does not limit the effect of paragraph (b) of this Section 7.01;

(2) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it is proved in a court of competent jurisdiction that the Trustee was negligent in ascertaining the pertinent facts; and

(3) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.05.

(d) Whether or not therein expressly so provided, every provision of this Indenture that in any way relates to the Trustee is subject to the provisions of this Section 7.01.

(e) The Trustee shall be under no obligation to exercise any of the rights or powers under this Indenture, Collateral Documents, the Notes and the Note Guarantees at the request or direction of any of the Holders or expend or risk its own funds or otherwise incur financial liability in the performance of its duties hereunder or under any of the Notes Documents unless such Holders have offered to the Trustee indemnity or security reasonably satisfactory to it against any loss, liability or expense.

(f) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Issuer. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

Section 7.02 Rights of Trustee.

Subject to Section 7.01:

(a) The Trustee may conclusively rely upon any document believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in the document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine in good faith to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Issuer, personally or by agent or attorney at the sole cost of the Issuer and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

(b) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel or both subject to the other provisions of this Indenture. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officers' Certificate or Opinion of Counsel. The Trustee may consult with counsel of its selection and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection from liability in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(c) The Trustee may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any agent or attorney appointed with due care.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within the rights or powers conferred upon it by this Indenture.

(e) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Issuer or a Guarantor shall be sufficient if signed by an

Officer of the Issuer or such Guarantor.

(f) None of the provisions of this Indenture shall require the Trustee to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or indemnity reasonably satisfactory to it against such risk or liability is not assured to it.

(g) The Trustee shall not be deemed to have notice or knowledge of any Default or Event of Default unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a Default is received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the existence of a Default or Event of Default, the Notes and this Indenture.

(h) In no event shall the Trustee be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(i) The rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder.

(j) The Trustee may request that the Issuer deliver an Officers' Certificate setting forth the names of individuals or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officers' Certificate may be signed by any person authorized to sign an Officers' Certificate, including any Person specified as so authorized in any such certificate previously delivered and not superseded.

(k) The Trustee shall not be required to give any bond or surety in respect of the performance of its powers and duties hereunder.

(l) The Trustee shall have no duty (A) to see to any recording, filing, or depositing of this Indenture or any agreement referred to herein or any financing statement or continuation statement evidencing a security interest, or to see to the maintenance of any such recording or filing or depositing or to any rerecording, refiling or redepositing of any thereof, (B) to see to any insurance or (C) to see to the payment or discharge of any tax, assessment, or other governmental charge or any Lien or encumbrance of any kind owing with respect to, assessed or levied against, any part of the trust fund.

(m) Except as otherwise expressly provided herein, the rights, privileges, protections, exculpations, immunities, indemnities and benefits provided to the Trustee hereunder (including but not limited to its right to be indemnified) are extended to, and shall be enforceable by, the Trustee and to its Responsible Officers and other Persons duly employed by them hereunder as if they were each expressly set forth herein for the benefit of the Trustee in such capacity, Responsible Officers or employees of the Trustee mutatis mutandis.

(n) The Trustee may request that an Issuer deliver an Officers' Certificate setting forth the names of the individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officers' Certificate may be signed by any person authorized to sign an Officers' Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded.

(o) Anything in this Indenture notwithstanding, in no event shall the Trustee be liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit), even if the Trustee has been advised as to the likelihood of such loss or damage and regardless of the form of action.

(p) The Trustee shall not be responsible or liable for any failure or delay in the performance of its obligations under this Indenture arising out of or caused, directly or indirectly, by circumstances beyond its control, including, without limitation, any provision of any law or regulation or any act of any governmental authority; natural catastrophes or other acts of God; earthquakes; fire; flood; terrorism; wars and other military disturbances; sabotage; epidemics; riots; interruptions; loss or malfunctions of utilities, computer (hardware or software) or communication services; accidents; labor disputes; acts of civil or military authority and governmental action.

(q) The permissive right of the Trustee to take any action under this Indenture or under any other agreement in connection herewith shall not be construed as a duty.

Section 7.03 Individual Rights of Trustee.

The Trustee or any Agent in its individual or any other capacity may become the owner or pledgee of Notes and may otherwise deal with the Issuer or any Affiliate of the Issuer with the same rights it would have if it were not Trustee or such Agent. Any Agent may do the same with like rights and duties. The Trustee is also subject to Section 7.10.

Section 7.04 Trustee's Disclaimer.

The recitals contained herein and in the Notes, except for the Trustee's certificates of authentication, shall be taken as the statements of the Issuer, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the validity, sufficiency or adequacy of this Indenture, of the Notes or of the Note Guarantees, or of any other Notes Document except that the Trustee represents that it is duly authorized to execute and deliver this Indenture, authenticate the Notes and perform its obligations hereunder. The Trustee shall not be accountable for the use or application by the Issuer of Notes or the proceeds thereof. The Trustee shall not be responsible to make any calculation with respect to any matter under this Indenture. It shall not be responsible for the use or application of any money received by any Paying Agent other than the Trustee, and it shall not be responsible for any statement or recital herein or any statement in the Notes or the Note Guarantees or any other document in connection with the issuance or sale of the Notes or pursuant to this Indenture other than its certificate of authentication. The Trustee shall have no duty to monitor or investigate the Issuer's compliance with or the breach of, or cause to be performed or observed, any representation, warranty or covenant made in this Indenture or any Security Document.

Section 7.05 Notice of Defaults.

If a Default occurs and is continuing of which a Responsible Officer of the Trustee has received written notice, the Trustee shall send electronically or mail to each Holder a notice of the Default within 90 days after it has received such written notice. Except in the case of an Event of Default specified in clauses (1) or (2) of Section 6.01(a), the Trustee may withhold from the Holders notice of any continuing Default if the Trustee determines in good faith that withholding the notice is in the interest of the Holders.

Section 7.06 Reports by Trustee to Holders of the Notes.

The Issuer shall promptly notify the Trustee in writing in the event the Notes are listed on any national securities exchange or delisted therefrom.

Section 7.07 Compensation and Indemnity.

(a) The Issuer and the Guarantors, jointly and severally, shall pay to the Trustee, in its capacity as Trustee and as an Agent, from time to time such compensation for its acceptance of this Indenture and services hereunder and under each other Notes Document as the parties shall agree in writing from time to time. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Issuer shall reimburse the Trustee promptly upon request for all reasonable disbursements, advances and expenses incurred or made by it, in its capacity as Trustee and as an Agent, in addition to the compensation for its services. Such expenses shall include the reasonable compensation, disbursements and expenses of the respective agents and counsel of the Trustee and the Collateral Agent.

(b) The Issuer and the Guarantors, jointly and severally, shall indemnify the Trustee, in its capacity as Trustee and as an Agent, for, and hold the Trustee and any predecessor harmless against, any and all loss, damage, claims, liability or expense (including attorneys' fees and expenses) incurred by it in connection with the acceptance or administration of this trust and the performance of its duties hereunder (including the costs and expenses of enforcing this Indenture against the Issuer or any Guarantor (including this Section 7.07)) or defending itself against any claim whether asserted by any Holder, the Issuer or any Guarantor, or liability in connection with the acceptance, exercise or performance of any of its powers or duties hereunder). The Trustee shall notify the Issuer promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Issuer shall not relieve the Issuer of its obligations hereunder. The Issuer shall defend the claim and the Trustee may have separate counsel and the Issuer shall pay the fees and expenses of such counsel. The Issuer need not reimburse any expense or indemnify against any loss, liability or expense incurred by the Trustee, in its capacity as Trustee and as an Agent, through the Trustee's own willful misconduct, gross negligence or bad faith.

(c) The obligations of the Issuer and the Guarantors under this Section 7.07 shall survive the satisfaction and discharge of this Indenture or the earlier resignation or removal of the Trustee, in its capacity as Trustee and as an Agent, as the case may be.

(d) To secure the payment obligations of the Issuer and the Guarantors in this Section 7.07, the Trustee shall have a Lien prior to the Notes on all money or property held or

collected by the Trustee, in its capacity as Trustee and as an Agent, as the case may be, except that held in trust to pay principal and interest on particular Notes. Such Lien shall survive the satisfaction and discharge of this Indenture or the earlier resignation or removal of the Trustee, in its capacity as Trustee and as an Agent, as the case may be.

(e) When the Trustee incurs expenses or renders services after an Event of Default specified in Section 6.01(a)(9) occurs, the expenses and the compensation for the services (including the fees and expenses of its agents and counsel) are intended to constitute expenses of administration under any Bankruptcy Law.

Section 7.08 Replacement of Trustee.

(a) A resignation or removal of the Trustee and appointment of a successor Trustee shall become effective only upon the successor Trustee's acceptance of appointment as provided in this Section 7.08. The Trustee may resign in writing at any time by giving 30 days prior notice of such resignation to the Issuer and be discharged from the trust hereby created by so notifying the Issuer. The Holders of a majority in aggregate principal amount of the then outstanding Notes may remove the Trustee by so notifying the Trustee and the Issuer in writing. The Issuer may remove the Trustee if:

(1) the Trustee fails to comply with Section 7.10;

(2) the Trustee is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;

(3) a receiver or public officer takes charge of the Trustee or its property; or

(4) the Trustee becomes incapable of acting.

(b) If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Issuer shall promptly appoint a successor Trustee. Within one year after the successor Trustee takes office, the Holders of a majority in aggregate principal amount of the then outstanding Notes may remove the successor Trustee to replace it with another successor Trustee.

(c) If a successor Trustee does not take office within 45 days after the retiring Trustee resigns or is removed, the retiring Trustee (at the Issuer's expense), the Issuer or the Holders of at least 10% in aggregate principal amount of the then outstanding Notes may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(d) If the Trustee, after written request by any Holder who has been a Holder for at least six months, fails to comply with Section 7.10, such Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(e) A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Issuer. Thereupon, the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee shall mail a notice of its

succession to Holders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee; *provided* that all sums owing to the Trustee hereunder have been paid and such transfer shall be subject to the Lien provided for in Section 7.07. Notwithstanding replacement of the Trustee pursuant to this Section 7.08, the Issuer's Obligations under Section 7.07 shall continue for the benefit of the retiring Trustee.

(f) As used in this Section 7.08, the term "Trustee" shall also include each Agent.

Section 7.09 Successor Trustee by Merger, etc.

If the Trustee consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation or national banking association, the successor corporation or national banking association without any further act shall be the successor Trustee, subject to Section 7.10.

Section 7.10 Eligibility; Disqualification.

(a) There shall at all times be a Trustee hereunder that is a corporation or national banking association organized and doing business under the laws of the United States or of any state thereof that is authorized under such laws to exercise corporate trustee power, that is subject to supervision or examination by federal or state authorities and that has a combined capital and surplus of at least $50.0 million as set forth in its most recent published annual report of condition.

(b) This Indenture shall always have a Trustee who satisfies the requirements of Trust Indenture Act Sections 310(a)(1), (2) and (5). The Trustee is subject to Trust Indenture Act Section 310(b).

ARTICLE 8

[RESERVED]

ARTICLE 9

AMENDMENT, SUPPLEMENT AND WAIVER

Section 9.01 Without Consent of Holders.

(a) Notwithstanding Section 9.02, without the consent of any Holder, the Issuer, the Guarantors and the Trustee may amend this Indenture, the Notes, the Note Guarantees and each other Notes Document to:

(1) cure any ambiguity, omission, defect or inconsistency;

(2) provide for the assumption by a successor entity of the Obligations of the Issuer or any Guarantor under this Indenture, the Note Guarantees and the other Notes Documents in accordance with Article 5;

(3) provide for or facilitate the issuance of uncertificated Notes in addition to or in place of certificated Notes; *provided* that the uncertificated Notes are issued in registered form for purposes of Section 163(f) of the Code or in a manner such that the uncertificated Notes are described in Section 163(f)(2)(B) of the Code;

(4) comply with the rules of any applicable depositary;

(5) add Guarantors with respect to the Notes or release a Guarantor from its Obligations under its Note Guarantee or this Indenture in accordance with the applicable provisions of this Indenture;

(6) add covenants of the Issuer, any other Obligor, and any of its or their Subsidiaries or Events of Default for the benefit of Holders or to make changes that would provide additional rights to the Holders or to surrender any right or power conferred upon any Obligor;

(7) make any change that does not materially adversely affect the legal rights under this Indenture, the Notes or any other Notes Document of any Holder;

(8) evidence and provide for the acceptance of an appointment under this Indenture of a successor trustee or collateral agent; *provided* that the successor trustee or collateral agent is otherwise qualified and eligible to act as such under the terms of this Indenture;

(9) confirm and evidence the release, termination or discharge of any Lien with respect to or securing the Notes or the Note Guarantees when such release, termination or discharge is provided for in accordance with the terms of this Indenture or the Collateral Documents;

(10) to comply with requirements of the SEC in order to effect or maintain the qualification of this Indenture under the Trust Indenture Act;

(11) make any amendment to the provisions of this Indenture relating to the transfer and legending of Notes as permitted by this Indenture, including, without limitation, to facilitate the issuance and administration of the Notes; *provided*, *however*, that (A) compliance with this Indenture as so amended would not result in Notes being transferred in violation of the Securities Act or any applicable securities law and (B) such amendment does not materially and adversely affect the rights of Holders to transfer Notes.

(b) Upon the request of the Issuer, and upon receipt by the Trustee of the documents described in Section 13.04, the Trustee shall join with the Issuer and the Guarantors in the execution of any amended or supplemental indenture or other Notes Document authorized or permitted by the terms of this Indenture and to make any further appropriate agreements and stipulations that may be therein contained, but the Trustee shall not be obligated to enter into such amended or supplemental indenture or other Notes Document that affects its own rights, duties or immunities in any capacity under this Indenture or otherwise. Notwithstanding the foregoing, no Opinion of Counsel shall be required in connection with the addition of a

Guarantor under this Indenture upon execution and delivery by such Guarantor, the Trustee of a supplemental indenture to this Indenture, the form of which is attached as Exhibit C, and delivery of an Officers' Certificate.

Section 9.02 With Consent of Holders.

(a) Except as provided in Section 9.01 and this Section 9.02, the Issuer, the Guarantors and the Trustee may amend or supplement this Indenture, the Notes, the Note Guarantees and each other Notes Document with the consent of the Holders of a majority in principal amount of the Notes then outstanding voting as a single class (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes) and, subject to Section 6.04 and Section 6.07, any existing Default or Event of Default (other than a Default or Event of Default in the payment of the principal, premium, if any, or interest on the Notes, except a payment default resulting from an acceleration that has been rescinded) or compliance with any provision of this Indenture, the Notes, the Note Guarantees or any other Notes Document may be waived with the consent of the Holders of a majority in principal amount of the Notes then outstanding voting as a single class (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes). Section 2.08 and Section 2.09 shall determine which Notes are considered to be "outstanding" for the purposes of this Section 9.02.

(b) Upon the request of the Issuer, and upon the filing with the Trustee of evidence satisfactory to the Trustee of the consent of the Holders as aforesaid, and upon receipt by the Trustee of the documents described in Section 7.02 and Section 13.02, the Trustee shall join with the Issuer and the Guarantors in the execution of such amended or supplemental indenture unless such amended or supplemental indenture directly affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such amended or supplemental indenture.

(c) It shall not be necessary for the consent of the Holders under this Section 9.02 to approve the particular form of any proposed amendment, supplement or waiver. It shall be sufficient if such consent approves the substance of such proposed amendment, supplement or waiver.

(d) After an amendment, supplement or waiver under this Section 9.02 becomes effective, the Issuer shall give to the Holders a notice briefly describing such amendment, supplement or waiver. However, the failure of the Issuer to give such notice to all the Holders, or any defect in the notice, shall not impair or affect the validity of any such amendment, supplement or waiver.

(e) [Reserved]

(f) Without the consent of each affected Holder, an amendment, supplement or waiver under this Section 9.02 may not (with respect to any Notes held by a non-consenting Holder):

(1) reduce the principal amount of Notes whose Holders must consent to an amendment, supplement or waiver;

(2) reduce the stated rate of interest or extend the stated time for payment of interest on any Note;

(3) reduce the principal of or extend the Stated Maturity of any Note;

(4) waive a Default or Event of Default in the payment of principal of, premium, if any, or interest on the Notes (except a rescission of acceleration of the Notes by the Holders of at least a majority in aggregate principal amount of the then outstanding Notes with respect to a nonpayment default and a waiver of the payment default that resulted from such acceleration);

(5) reduce the premium payable upon the redemption or repurchase of any Note or change the time at which any Note may be redeemed or repurchased as described in Sections 3.06, 4.15, 6.02(b) or 6.02(c), whether through an amendment or waiver of provisions in the covenants, definitions or otherwise;

(6) make any Note payable in a currency other than that stated in the Note;

(7) impair the right of any Holder to receive payment of principal, premium, if any, or interest on such Holder's Notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder's Notes;

(8) make any change in the amendment or waiver provisions which require each Holder's consent;

(9) modify the Note Guarantees in any manner adverse to the Holders; or

(10) amend, change or modify the obligation of the Issuer or any Guarantor to pay Additional Amounts.

In addition, without the consent of the Holders of at least 66 2/3% of the principal amount of the Notes then outstanding (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes), no amendment, supplement or waiver may modify any Collateral Document or the provisions in this Indenture dealing with Collateral Documents or application of trust moneys in any manner, taken as a whole, materially adverse to the Holders or otherwise release any Collateral other than in accordance with this Indenture and the Collateral Documents.

(g) A consent to any amendment, supplement or waiver of this Indenture, the Notes or the Note Guarantee or any other Notes Document by any Holder given in connection with a tender of such Holder's Notes shall not be rendered invalid by such tender.

Section 9.03 Compliance with Trust Indenture Act.

If this Indenture is qualified under the Trust Indenture Act, every amendment or supplement to this Indenture or the Notes shall be set forth in an amended or supplemental indenture that complies with the Trust Indenture Act as then in effect.

Section 9.04 Revocation and Effect of Consents.

(a) Until an amendment, supplement or waiver becomes effective, a consent to it by a Holder of a Note is a continuing consent by the Holder of a Note and every subsequent Holder of a Note or portion of a Note that evidences the same debt as the consenting Holder's Note, even if notation of the consent is not made on any Note. However, any such Holder of a Note or subsequent Holder of a Note may revoke the consent as to its Note if the Trustee receives written notice of revocation before the date the waiver, supplement or amendment becomes effective. An amendment, supplement or waiver becomes effective in accordance with its terms and thereafter binds every Holder.

(b) The Issuer may, but shall not be obligated to, fix a record date pursuant to Section 1.05 for the purpose of determining the Holders entitled to consent to any amendment, supplement or waiver.

Section 9.05 Notation on or Exchange of Notes.

(a) The Trustee may place an appropriate notation about an amendment, supplement or waiver on any Note thereafter authenticated. The Issuer in exchange for all Notes may issue and the Trustee shall, upon receipt of an Authentication Order, authenticate new Notes that reflect the amendment, supplement or waiver.

(b) Failure to make the appropriate notation or issue a new Note shall not affect the validity and effect of such amendment, supplement or waiver.

Section 9.06 Trustee to Sign Amendments, etc.

The Trustee shall sign any amendment, supplement or waiver authorized pursuant to this Article 9 if the amendment, supplement or waiver does not adversely affect the rights, duties, liabilities or immunities of the Trustee. In executing any amendment, supplement or waiver, the Trustee shall receive and (subject to Section 7.01) shall be fully protected in conclusively relying upon, in addition to the documents required by Section 13.02, an Officers' Certificate and an Opinion of Counsel stating that the execution of such amendment, supplement or waiver is authorized or permitted by this Indenture and that such amendment, supplement or waiver is the legal, valid and binding obligation of the Issuer and any Guarantor party thereto, enforceable against them in accordance with its terms, subject to customary exceptions, and complies with the provisions hereof (including Section 9.03).

Section 9.07 Payment for Consent.

No Obligor shall, or shall permit any of its Subsidiaries to, directly or indirectly, pay or cause to be paid any consideration to or for the benefit of any Holder for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of this Indenture or the Notes unless such consideration is offered to all Holders and is paid to all Holders that consent, waive or agree to amend in the time frame set forth in the solicitation documents relating to such consent, waiver or amendment; *provided* that if such consents, waivers or amendments are sought in connection with an exchange offer where participation in such exchange offer is limited to Holders who are QIBs, or non-U.S. Persons, within the

meaning given to such term in Regulation S under the Securities Act then such consideration need only be offered to all Holders to whom the exchange offer is made and to be paid to all such Holders that consent, waive or agree to amend in such time frame.

ARTICLE 10

COLLATERAL AND SECURITY

Section 10.01 The Collateral.

(a) The Issuer hereby appoints the Trustee to act as Collateral Agent, and each Holder by its acceptance of any Notes and the Guarantees thereof, irrevocably consents and agrees to such appointment. The Collateral Agent shall have the privileges, powers and immunities set forth in this Indenture and the Collateral Documents. All of the rights and protections granted to the Trustee pursuant to Article 7 and Section 13.02 of this Indenture are applicable to the Collateral Agent *mutatis mutandis*. The due and punctual payment of the principal of, premium, if any, and interest on the Notes and the Guarantees thereof when and as the same shall be due and payable, whether on an Amortization Payment Date, an Interest Payment Date, at maturity, by acceleration, repurchase, redemption or otherwise, interest on the overdue principal of and interest (to the extent permitted by law), if any, on the Notes and the Guarantees thereof and performance of all other Obligations under this Indenture, including, without limitation, the Obligations of the Issuer set forth in Section 7.07 herein, and the Notes and the Guarantees thereof and the Collateral Documents, shall be secured by first-priority Lien and security interests in the Collateral, in each case subject to Permitted Liens, as and to the extent provided in the Collateral Documents which the Issuer and Guarantors have entered into simultaneously with the execution of this Indenture and shall be secured by all Collateral Documents hereafter delivered as required or permitted by this Indenture and the Collateral Documents. The Issuer and the Guarantors hereby agree that the Collateral Agent shall hold the Collateral in trust for the benefit of all of the Holders and the Trustee, in each case pursuant to the terms of the Collateral Documents, and the Collateral Agent and the Trustee are hereby authorized to execute and deliver the Collateral Documents.

(b) Each Holder, by its acceptance of any Notes and the Guarantees thereof, irrevocably consents and agrees to the terms of the Collateral Documents (including, without limitation, the provisions providing for foreclosure and release of Collateral) as the same may be in effect or may be amended from time to time in accordance with their terms, agrees to the appointment of the Collateral Agent and authorizes and directs the Collateral Agent to perform its obligations and exercise its rights, powers and discretions under the Collateral Documents in accordance therewith.

(c) The Trustee and each Holder, by accepting the Notes and the Guarantees thereof, acknowledges that, as more fully set forth in the Collateral Documents, the Collateral as now or hereafter constituted shall be held for the benefit of all the Holders and the Trustee, and that the Lien of this Indenture and the Collateral Documents in respect of the Trustee and the Holders is subject to and qualified and limited in all respects by the Collateral Documents and actions that may be taken thereunder.

Section 10.02 Further Assurances.

(a) The Issuer and the Guarantors shall execute any and all further documents, financing statements, agreements and instruments, and take all further actions that may be required under applicable law, or that the Collateral Agent or the Trustee may reasonably request, in order to grant, preserve, protect and perfect the validity and priority of the security interests and Liens created or intended to be created by the Collateral Documents in the Collateral. In addition, to the extent required under this Indenture or any of the Collateral Documents, from time to time, the Issuer and the Guarantors shall reasonably promptly secure the Obligations under this Indenture and Collateral Documents by pledging or creating, or causing to be pledged or created, perfected security interests and Liens with respect to the Collateral to the extent required by the Collateral Documents. Such security interests and Liens shall be created under the Collateral Documents and other security agreements and other instruments and documents in form and substance reasonably satisfactory to the Collateral Agent.

(b) Without limiting any rights or powers granted by this Indenture to the Trustee, Paying Agent or Collateral Agent, the Trustee, Paying Agent or Collateral Agent, as applicable, is hereby appointed the attorney in fact of each of the Issuer and the Guarantors for the purpose of carrying out the provisions of this Indenture and taking any action and executing any instruments that the Trustee, Paying Agent or Collateral Agent, as applicable, may deem necessary or advisable to accomplish the purposes, which appointment as attorney in fact is irrevocable and coupled with an interest. Without limiting the generality of the foregoing, so long as the Trustee, Paying Agent or Collateral Agent, as applicable, shall be entitled under this Indenture or any of the Collateral Documents to make collections in respect of the Collateral, the Trustee, Paying Agent or Collateral Agent, as applicable, shall have the right and power to receive, endorse and collect all checks made payable to the order of any of the Issuer or Guarantors representing any dividend, payment or other distribution in respect of the Collateral or any part thereof and to give full discharge for the same.

Section 10.03 After-Acquired Property.

(a) Upon the acquisition by the Issuer or any of the Guarantors after the Issue Date of any assets, or any equipment or fixtures which constitute accretions, additions or technological upgrades to the equipment or fixtures or any working capital assets that, in any such case, form part of the Collateral, the Issuer or such Guarantor shall execute and deliver:

(1) with regard to real property, the items described in Section 10.05 within 90 days of the date of acquisition of the applicable asset (but not earlier than 150 days after the Issue Date) and,

(2) with regard to any other after-acquired property to the extent required by the Collateral Documents, any information, documentation, financing statements or other certificates and opinions of counsel as may be necessary to vest in the Collateral Agent a perfected security interest, subject only to Permitted Liens, in such after-acquired property and to have such after-acquired property added to the Collateral, and thereupon all provisions of the Indenture and the Collateral Documents relating to the Collateral

shall be deemed to relate to such after-acquired property to the same extent and with the same force and effect.

(b) With respect to as-extracted Collateral, if any, on any real property, the Issuer and Guarantors shall be required to make or permit any financing statement required by the Collateral Documents as soon as reasonably practicable, but in any event, within 30 days of date of acquisition of the real property. Further, the Issuer and Guarantors shall not be obligated to make or permit any financing statement filings at any county, real estate or other local filing office solely with respect to fixtures or as-extracted Collateral, if any, located on Leased Real Property until 30 days after the date the Issuer or Guarantors acquire rights to such Leased Real Property, or in any event if such a filing would be prohibited by, or constitute a breach or default under or result in the termination of or require any consent not obtained under, any contract, license, agreement, instrument or other document evidencing or giving rise to the Leased Real Property.

Section 10.04 Impairment of Security Interest.

Neither the Issuer nor any of the Subsidiaries or Guarantors shall (i) take or omit to take any action which would materially adversely affect or impair the Liens in favor of the Collateral Agent and the Holders of Notes with respect to the Collateral, (ii) grant any Person, or permit any Person (other than the Collateral Agent), to retain any Liens on the Collateral, other than Permitted Liens or (iii) enter into any agreement that requires the proceeds received from any sale of Collateral to be applied to repay, redeem, defease or otherwise acquire or retire any Indebtedness of any Person in a manner that conflicts with this Indenture, the Notes, the Note Guarantees and the Collateral Documents. The Issuer and each Guarantor shall, at their sole cost and expense, execute and deliver all such agreements and instruments as necessary, or as the Trustee or the Collateral Agent reasonably requests, to more fully or accurately describe the assets and property intended to be Collateral or the Obligations intended to be secured by the Collateral Documents.

Section 10.05 Real Estate Mortgages and Filings.

With respect to any fee interest in any Premises owned by an Obligor or any of their Subsidiaries on the Issue Date or acquired by an Obligor or any of their Subsidiaries after the Issue Date that forms a part of the Collateral, within 150 days of the Issue Date or 90 days of the date of acquisition (but not earlier than 150 days from the Issue Date), as applicable:

(a) each Obligor or any of their Subsidiaries shall deliver to the Collateral Agent, as mortgagee or beneficiary, as applicable, for the ratable benefit of itself and the Holders, fully executed counterparts of Mortgages, in accordance with the requirements of this Indenture and/or the Collateral Documents, duly executed by such Obligor or such Subsidiary, together with satisfactory evidence of the completion (or satisfactory arrangements for the completion) of all recordings and filings of such Mortgage (and payment of any taxes or fees in connection therewith), together with any necessary fixture filings, as may be necessary to create a valid, perfected Lien, with the priority required by the Collateral Documents, subject to Permitted Liens, against the properties purported to be covered thereby;

(b) the Collateral Agent shall have received mortgagee's title insurance policies in favor of the Collateral Agent, and its successors and/or assigns, in the form necessary, with respect to the surface rights in real property purported to be covered by the applicable Mortgages, to insure that the interests created by the Mortgages constitute valid Liens thereon, with the priority required by the Collateral Documents, free and clear of all Liens, defects and encumbrances, other than Permitted Liens. All such title policies to be in amounts equal to 100% of the estimated Fair Market Value of the Premises covered thereby and such policies shall also include, to the extent available, all such endorsements as shall be reasonably required in transactions of similar size and purpose and shall be accompanied by evidence of the payment in full by the Issuer or the applicable Guarantor of all premiums thereon (or that satisfactory arrangements for such payment have been made); and

(c) each applicable Obligor or any of their Subsidiaries shall deliver to the Collateral Agent (x) with respect to each of the Premises owned on the Issue Date, such existing surveys, plats, or maps that are in the possession of any such Obligor or Subsidiary and such local counsel opinions and opinions of counsel in the jurisdiction of organization of the owner of the applicable Premises as are necessary and appropriate and (y) with respect to each of the Premises acquired after the Issue Date, such existing surveys, plats, or maps that are in the possession of such Obligor or such Subsidiary and such local counsel opinions and opinions of counsel in the jurisdiction of organization of the owner of the applicable Premises as the Collateral Agent and its counsel may reasonably request.

Section 10.06 Release of Collateral.

(a) The Liens on the Collateral shall be released with respect to the Notes and the Note Guarantees, as applicable:

(1) in whole, upon payment in full of the principal of, accrued and unpaid interest and premium, if any, on the Notes;

(2) in whole, upon satisfaction and discharge of this Indenture in accordance with Article 12 of this Indenture;

(3) [Reserved];

(4) in part, as to any property constituting Collateral (A) that is sold, transferred or otherwise disposed of by the Issuer or any of the Guarantors (other than to the Issuer or another Guarantor) in a transaction permitted by the Collateral Documents (to the extent of the interest sold or disposed of); or (B) otherwise in accordance with, and as expressly provided for under, this Indenture or the Collateral Documents;

(5) in whole as to all Collateral that is owned by a Guarantor that is released from its Note Guarantee in accordance with this Indenture; and

(6) in whole or in part, with the consent of Holders of $66^{2/3}$% in aggregate principal amount of the Notes (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes);

provided, that, in the case of any release in whole pursuant to clauses (1) through (3) above, all amounts owing to the Trustee and the Collateral Agent under this Indenture, the Notes, the Note Guarantees and the Collateral Documents have been paid or otherwise provided for to the reasonable satisfaction of the Trustee and Collateral Agent.

(b) With respect to the release of Collateral, the Issuer shall furnish to the Trustee and Collateral Agent, prior to each proposed release of Collateral pursuant to the Collateral Documents and this Indenture, an Officers' Certificate and an Opinion of Counsel to the effect that all conditions precedent provided for in this Indenture and the Collateral Documents to such release have been complied with; *provided, however*, in no event shall an Officers' Certificate be required to release a Lien on Collateral that is sold or pledged in the ordinary course of business to the extent such sale or pledge is permitted by this Indenture.

Upon compliance by the Issuer or the Guarantors, as the case may be, with the conditions precedent set forth above, the Trustee or the Collateral Agent shall promptly cause to be released and reconveyed to the Issuer or the Guarantors, as the case may be, the released Collateral and, if necessary, the Collateral Agent shall, at the Issuer's expense, execute (and the Issuer shall file) such documents or instruments (that are prepared by the Issuer and provided to the Collateral Agent) as shall be necessary to provide for the release by the Collateral Agent of the released Collateral.

Section 10.07 Authorization of Actions to be Taken by the Trustee or the Collateral Agent Under the Collateral Documents.

(a) Subject to the provisions of the Collateral Documents, each of the Trustee or the Collateral Agent may, in its sole discretion and without the consent of the Holders, on behalf of the Holders, take all actions it deems necessary or appropriate in order to (a) enforce any of its rights or any of the rights of the Holders under the Collateral Documents and (b) collect and receive any and all amounts payable in respect of the Collateral in respect of the Obligations of the Obligors and any of their Subsidiaries hereunder and thereunder. Subject to the provisions of the Collateral Documents, the Trustee or the Collateral Agent shall have the power to institute and to maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Collateral by any acts that may be unlawful or in violation of the Collateral Documents or this Indenture, and such suits and proceedings as the Trustee or the Collateral Agent may deem expedient to preserve or protect its interest and the interests of the Holders in the Collateral (including power to institute and maintain suits or proceedings to restrain the enforcement of or compliance with any legislative or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid if the enforcement of, or compliance with, such enactment, rule or order would impair the security interest hereunder or be prejudicial to the interests of the Holders or the Trustee).

(b) The Trustee or the Collateral Agent shall not be responsible for the perfection or priority of the Liens in any of the Collateral, whether impaired by operation of law or by reason of any action or omission to act on its part hereunder, except to the extent such action or omission constitutes gross negligence, bad faith or willful misconduct on the part of the Trustee or the Collateral Agent, for the validity, sufficiency, existence, genuineness or value of the Collateral or the validity or enforceability of the Liens in any of the Collateral or any

agreement or assignment contained therein, for the validity of the title of the Issuer or the Guarantors to the Collateral, for insuring the Collateral or for the payment of taxes, charges, assessments or Liens upon the Collateral or otherwise as to the maintenance of the Collateral. The Trustee or the Collateral Agent shall have no responsibility for recording, filing, re-recording or re-filing any financing statement, continuation statement, document, instrument or other notice in any public office at any time or times or to otherwise take any action to perfect or maintain the perfection of any security interest granted to it under the Collateral Documents or otherwise.

(c) Where any provision of this Indenture requires that additional property or assets be added to the Collateral, the Issuer shall deliver to the Trustee or the Collateral Agent the following:

(1) the form of instrument adding such Collateral, which, based on the type and location of the property subject thereto, shall be in substantially the form of the applicable Collateral Documents entered into on or about the date of this Indenture, with such changes thereto as the Issuer shall consider appropriate, or in such other form as the Issuer shall deem proper; provided that any such changes or such form are administratively satisfactory to the Trustee or the Collateral Agent; and

(2) such financing statements, if any, as the Issuer shall deem necessary to perfect the Collateral Agent's security interest in such Collateral.

Section 10.08 Collateral Account.

(a) The Collateral Agent is authorized to receive any funds for the benefit of the Holders distributed under, and in accordance with, the Collateral Documents, and to make further distributions of such funds to the Holders according to the provisions of this Indenture and the Collateral Documents.

(b) All cash and Cash Equivalents received by the Collateral Agent from Recovery Events, Net Award or Net Insurance Proceeds, foreclosures of or sales of the Collateral, and other awards or proceeds pursuant to the Collateral Documents, including earnings, revenues, rents, issues, profits and income from the Collateral received pursuant to the Collateral Documents, shall be deposited in the Collateral Account and thereafter shall be held, applied and/or disbursed by the Collateral Agent in accordance with the terms of this Indenture (including, without limitation, Section 6.13 and Section 10.08(a)). The Collateral Account shall be a trust account and shall be established and maintained by the Collateral Agent at one of its corporate trust offices (which may include the New York corporate trust office), and all Collateral shall be credited thereto.

(c) Pending the distribution of funds in the Collateral Account in accordance with the provisions hereof and provided that no Event of Default shall have occurred and be continuing, the Issuer may direct the Collateral Agent in writing to invest such funds in Cash Equivalents specified in such direction, such investments to mature by the times such funds are needed hereunder and such direction to certify that such funds constitute Cash Equivalents and that no Event of Default shall have occurred and be continuing. So long as no Event of Default

shall have occurred and be continuing, the Issuer may direct the Collateral Agent to sell, liquidate or cause the redemption of any such investments, such direction to certify that no Event of Default shall have occurred and be continuing. Any gain or income on any investment of funds in the Collateral Account shall be credited to the Collateral Account. The Collateral Agent shall have no liability for any loss, fee, tax or other charge incurred in connection with any investment or any sale, reinvestment, liquidation or redemption thereof made in accordance with the provisions of this Section 10.08(c).

Section 10.09 Information Regarding Collateral.

(a) The Issuer shall furnish to the Collateral Agent, with respect to the Issuer or any Guarantor, promptly (and in any event within 30 days of such change) written notice of any change in such Person's (1) legal name, (2) jurisdiction of organization or formation, (3) identity or corporate structure or (4) organizational identification number. The Issuer and the Guarantors shall agree not to effect or permit any change referred to in the preceding sentence unless all filings have been made under the Uniform Commercial Code and any other applicable laws that are required in this Indenture and/or the Collateral Documents in order for the Collateral to be made subject to the Lien of the Collateral Agent under this Indenture and/or the Collateral Documents in the manner and to the extent required by this Indenture or any of the Collateral Documents and shall take all necessary action so that such Lien is perfected with the same priority as immediately prior to such change to the extent required by the Indenture and/or the Collateral Documents. The Issuer also agree promptly to notify the Collateral Agent in writing if any material portion of the Collateral is damaged, destroyed or condemned.

(b) Each year, within 150 days after the end of the preceding fiscal year, the Issuer shall deliver to each of the Trustee and the Collateral Agent an Officers' Certificate setting forth the information required pursuant to the schedules required by the Collateral Documents or confirming that there has been no change in such information since the date of the prior annual certification.

Section 10.10 Maintenance of Collateral.

Each Obligor shall maintain the Collateral in good, safe and insurable operating order, condition and repair (ordinary wear and tear excepted, and only to the extent such Collateral is in operating order as of the date of the original issuance of the Notes hereunder, or the relevant Obligor brings non-operating Collateral into operation after the date of the original issuance of the Notes hereunder) and do all other acts as may be reasonably necessary or appropriate to maintain and preserve the Collateral; *provided*, that the foregoing requirement shall not prevent any Obligor or any of their Subsidiaries from discontinuing the use, operation or maintenance of Collateral or disposing of Collateral, if such discontinuance or disposal (x) is, in the judgment of the Issuer, desirable in the conduct of the business of the Obligors taken as a whole and (y) is otherwise in compliance with the provisions of this Indenture and the Collateral Documents. The Obligors shall pay all real estate and other taxes, and maintain in full force and effect all material permits and insurance in amounts that insure against such losses and risks as are reasonable for the type and size of the business conducted by the Obligors.

Section 10.11 Negative Pledge

(a) None of the Obligors, any Person that is a parent of an Obligor, or any of their respective Subsidiaries shall pledge its Equity Interests as security or otherwise.

(b) No Obligor shall, and each Obligor shall not permit any of its Subsidiaries to, further pledge the Collateral as security or otherwise, subject to Permitted Liens.

ARTICLE 11

GUARANTEES

Section 11.01 Guarantee.

(a) Subject to this Article 11, each of the Guarantors party hereto jointly and severally irrevocably and unconditionally guarantees, on a senior secured basis, to each Holder and to the Trustee and its successors and assigns, in its capacity as Trustee and in each other capacity in which the Trustee serves as an Agent, irrespective of the validity and enforceability of this Indenture, the Notes or the Obligations of the Issuer hereunder or under any other Notes Document, that: (1) the principal, premium and Additional Amounts, if any, and interest on the Notes shall be promptly paid in full when due, whether at Stated Maturity, by acceleration, redemption or otherwise, and interest on the overdue principal and interest on the Notes, if any, if lawful, and all other Obligations of the Issuer to the Holders or the Trustee hereunder or under the Notes Documents shall be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and (2) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that same shall be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at Stated Maturity, by acceleration or otherwise collectively, the "Guaranteed Obligations". Failing payment by the Issuer when due of any amount so guaranteed or any performance so guaranteed for whatever reason, the Guarantors shall be jointly and severally obligated to pay. Each Guarantor agrees that this is a guarantee of payment and not a guarantee of collection.

(b) The Guarantors hereby agree that their Obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Notes or this Indenture or any other Notes Document, the absence of any action to enforce the same, any waiver or consent by any Holder with respect to any provisions hereof or thereof, the recovery of any judgment against the Issuer, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor. Each Guarantor hereby waives diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Issuer, protest, notice and all demands whatsoever and covenants that this Note Guarantee shall not be discharged except by complete performance of the Obligations contained in the Notes, this Indenture and each other Notes Document, or pursuant to Section 11.06.

(c) Each of the Guarantors jointly and severally also agrees to pay any and all costs and expenses (including reasonable attorneys' fees and expenses) incurred by the Trustee, any Agent or any Holder in enforcing any rights under this Section 11.01.

(d) If any Holder, any Agent or the Trustee is required by any court or

otherwise to return to the Issuer, the Guarantors or any custodian, trustee, liquidator or other similar official acting in relation to the Issuer or the Guarantors, any amount paid either to the Trustee, such Agent or such Holder, this Note Guarantee, to the extent theretofore discharged, shall be reinstated in full force and effect.

(e) Each Guarantor agrees that it shall not be entitled to enforce any right of subrogation in relation to the Holders in respect of any Obligations guaranteed hereby until payment in full of all Obligations guaranteed hereby. Each Guarantor further agrees that, as between the Guarantors, on the one hand, and the Holders, each Agent and the Trustee, on the other hand, (1) the maturity of the Obligations guaranteed hereby may be accelerated as provided in Article 6 for the purposes of this Note Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the Obligations guaranteed hereby, and (2) in the event of any declaration of acceleration of such Obligations as provided in Article 6, such Obligations (whether or not due and payable) shall forthwith become due and payable by the Guarantors for the purpose of this Note Guarantee. The Guarantors shall have the right to seek contribution from any non-paying Guarantor so long as the exercise of such right does not impair the rights of the Holders under the Note Guarantees.

(f) Each Note Guarantee shall remain in full force and effect and continue to be effective should any petition be filed by or against the Issuer for liquidation or reorganization, should the Issuer become insolvent or make an assignment for the benefit of creditors or should a receiver or trustee be appointed for all or any significant part of the Issuer's assets, and shall, to the fullest extent permitted by law, continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Notes are, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee on the Notes or the Note Guarantees, whether as a "voidable preference," "fraudulent transfer" or otherwise, all as though such payment or performance had not been made. In the event that any payment or any part thereof, is rescinded, reduced, restored or returned, the Notes shall, to the fullest extent permitted by law, be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

(g) In case any provision of any Note Guarantee shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

(h) Each payment to be made by a Guarantor in respect of its Note Guarantee shall be made without set-off, counterclaim, reduction or diminution of any kind or nature.

Section 11.02 Limitation on Guarantor Liability.

Each Guarantor, and by its acceptance of Notes, each Holder, hereby confirms that it is the intention of all such parties that the Note Guarantee of such Guarantor not constitute a fraudulent conveyance or a fraudulent transfer for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law to the extent applicable to any Note Guarantee. To effectuate the foregoing intention, the Trustee, each Agent, the Holders and the Guarantors hereby irrevocably agree that the Obligations of each Guarantor shall be limited to the maximum amount as will, after giving

effect to such maximum amount and all other contingent and fixed liabilities of such Guarantor that are relevant under such laws and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Guarantor in respect of the Obligations of such other Guarantor under this Article 11, result in the Obligations of such Guarantor under its Note Guarantee not constituting a fraudulent conveyance or fraudulent transfer under applicable law. Each Guarantor that makes a payment under its Note Guarantee shall be entitled upon payment in full of all Guaranteed Obligations under this Indenture to a contribution from each other Guarantor in an amount equal to such other Guarantor's pro rata portion of such payment based on the respective net assets of all the Guarantors at the time of such payment, determined in accordance with GAAP.

Section 11.03 Execution and Delivery.

(a) To evidence its Note Guarantee set forth in Section 11.01, each Guarantor hereby agrees that this Indenture shall be executed on behalf of such Guarantor by an Officer or person holding an equivalent title.

(b) Each Guarantor hereby agrees that its Note Guarantee set forth in Section 11.01 shall remain in full force and effect notwithstanding the absence of the endorsement of any notation of such Note Guarantee on the Notes.

(c) If an Officer whose signature is on this Indenture no longer holds that office at the time the Trustee authenticates the Note, the Note Guarantees shall be valid nevertheless.

(d) The delivery of any Note by the Trustee, after the authentication thereof hereunder, shall constitute due delivery of the Note Guarantee set forth in this Indenture on behalf of the Guarantors.

(e) If required by Section 4.11, any applicable Obligor shall cause any newly created or acquired Subsidiary to comply with the provisions of Section 4.11 and this Article 11, to the extent applicable.

Section 11.04 Subrogation.

Each Guarantor shall be subrogated to all rights of Holders against the Issuer in respect of any amounts paid by any Guarantor pursuant to the provisions of Section 11.01; *provided* that, if an Event of Default has occurred and is continuing, no Guarantor shall be entitled to enforce or receive any payments arising out of, or based upon, such right of subrogation until all amounts then due and payable by the Issuer under this Indenture or the Notes shall have been paid in full.

Section 11.05 Benefits Acknowledged.

Each Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated by this Indenture and that the guarantee and waivers made by it pursuant to its Note Guarantee are knowingly made in contemplation of such benefits.

Section 11.06 Release of Note Guarantees.

(a) A Note Guarantee by a Guarantor shall be automatically and unconditionally released and discharged, and no further action by such Guarantor, the Issuer or the Trustee shall be required for the release of such Guarantor's Note Guarantee, upon:

(1) (A) in the case of a Guarantor, any sale, assignment, transfer, conveyance, exchange or other disposition (by merger, consolidation or otherwise) of the Capital Stock of such Guarantor after which the applicable Guarantor is no longer a Subsidiary, which sale, assignment, transfer, conveyance, exchange or other disposition is made in compliance with the provisions of this Indenture and Section 5.01; *provided* that (i) all the Note Guarantees and other obligations of such Guarantor in respect of all other Indebtedness of the Issuer and its Subsidiaries terminate upon consummation of such transaction and (ii) any Investment of the Issuer or any other Subsidiary of the Issuer (other than any Subsidiary of such Guarantor) in such Guarantor or any Subsidiary of such Guarantor in the form of an Obligation or Preferred Stock is repaid, satisfied, released and discharged in full upon such release; or

(B) [Reserved];

(C) the discharge of the Issuer's Obligations in accordance with Article 12 of this Indenture; and

(2) such Guarantor delivering to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for in this Indenture relating to such transaction or release have been complied with.

(b) At the written request of the Issuer, the Trustee shall execute and deliver any documents reasonably required in order to evidence such release, discharge and termination in respect of the applicable Note Guarantee.

ARTICLE 12

SATISFACTION AND DISCHARGE

Section 12.01 Satisfaction and Discharge.

(a) This Indenture shall be discharged, and shall cease to be of further effect as to all Notes, when either:

(1) all Notes that have been authenticated and delivered (except lost, stolen or destroyed Notes that have been replaced or paid and Notes for whose payment money has been deposited in trust) have been delivered to the Trustee for cancellation; or

(2) (A) all Notes not theretofore delivered to the Trustee for cancellation have become due and payable by reason of the giving of a notice of redemption or otherwise, shall become due and payable within one year or are to be called for redemption within one year under arrangements satisfactory to the Trustee for

the giving of notice of redemption by the Trustee in the name, and at the expense, of the Issuer, and the Issuer or any Guarantor have irrevocably deposited or caused to be deposited with the Trustee, as trust funds in trust solely for the benefit of the Holders, cash in U.S. dollars, Government Securities, or a combination thereof, in such amounts as shall be sufficient, as confirmed, certified or attested to by an Independent Financial Advisor in writing to the Trustee, without consideration of any reinvestment of interest, to pay and discharge the entire Indebtedness on the Notes not theretofore delivered to the Trustee for cancellation for principal, premium, if any, and accrued interest to the date of maturity or redemption, as the case may be;

(B) no Default or Event of Default has occurred and is continuing on the date of such deposit or will occur as a result of such deposit (other than a Default or an Event of Default resulting from the borrowing of funds to be applied to make such deposit and any similar and simultaneous deposit relating to other Indebtedness and, in each case, the granting of Liens in connection therewith) and the deposit will not result in a breach or violation of, or constitute a default under, any other material agreement or material instrument (other than this Indenture) to which the Issuer or any Guarantor are a party or by which the Issuer or any Guarantor are bound;

(C) the Issuer or any Guarantor has paid or caused to be paid all sums payable by the Issuer under this Indenture; and

(D) the Issuer has delivered irrevocable instructions to the Trustee to apply the deposited money toward the payment of the Notes at maturity or the redemption date, as the case may be.

(b) In addition, the Issuer shall, upon its request for acknowledgement of satisfaction and discharge, deliver to the Trustee an Officers' Certificate and an Opinion of Counsel (which Opinion of Counsel may be subject to customary assumptions and exclusions) each stating that all conditions precedent to satisfaction and discharge have been satisfied. Notwithstanding the satisfaction and discharge of this Indenture, if money shall have been deposited with the Trustee pursuant to subclause (A) of clause (2) of Section 12.01(a), the provisions of Section 12.02 shall survive.

Section 12.02 Application of Trust Money.

(a) All money deposited with the Trustee pursuant to Section 12.01 shall be held in trust and applied by it, in accordance with the provisions of the Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Issuer acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal, premium, if any, and interest for whose payment such money has been deposited with the Trustee, but such money need not be segregated from other funds except to the extent required by law.

(b) If the Trustee or Paying Agent is unable to apply any money or Government Securities in accordance with Section 12.01 by reason of any legal proceeding or by reason of any order or judgment of any court or Governmental Authority enjoining, restraining

or otherwise prohibiting such application, the Issuer's and any Guarantor's Obligations under this Indenture, the Notes and the Note Guarantees shall be revived and reinstated as though no deposit had occurred pursuant to Section 12.01; *provided* that if the Issuer has made any payment of principal, premium, if any, or interest on any Notes because of the reinstatement of its Obligations, the Issuer shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money or Government Securities held by the Trustee or Paying Agent, as the case may be.

ARTICLE 13

MISCELLANEOUS

Section 13.01 Notices.

(a) Any notice or communication to the Issuer, any Guarantor or the Trustee is duly given if in writing and (1) delivered in person, (2) mailed by first-class mail (certified or registered, return receipt requested), postage prepaid, or overnight air courier guaranteeing next day delivery or (3) sent by facsimile or electronic transmission (PDF only), to its address:

if to the Issuer or any Guarantor:

c/o ERP Compliant Fuels, LLC
15 Appledore Lane
Natural Bridge, Virginia 24578
Attention: Tom Clarke
Email: Tom.Clarke@kissito.org

with a copy to:

Dentons US LLP
1221 Avenue of the Americas
New York, New York 10022
Attention: Oscar Pinkas
oscar.pinkas@dentons.com

if to the Trustee, Collateral Agent, Paying Agent, Registrar or Calculation Agent:

Wilmington Savings Fund Society, FSB, as Trustee
500 Delaware Avenue, 11th Floor
Wilmington, Delaware 19801
Attention: Geoffrey Lewis
Fax No.: (302) 421-9137
Email: glewis@wsfsbank.com

The Issuer, any Guarantor or the Trustee, by like notice, may designate additional or different addresses for subsequent notices or communications.

(b) All notices and communications (other than those sent to Holders) shall be

deemed to have been duly given: at the time delivered by hand, if personally delivered; on the first date of which publication is made, if by publication; five calendar days after being deposited in the mail, postage prepaid, if mailed by first-class mail; the next Business Day after timely delivery to the courier, if mailed by overnight air courier guaranteeing next day delivery; when receipt acknowledged, if sent by facsimile or electronic transmission; *provided* that any notice or communication delivered to the Trustee shall be deemed effective upon actual receipt thereof.

(c) Any notice or communication to a Holder shall be mailed by first-class mail (certified or registered, return receipt requested) or by overnight air courier guaranteeing next day delivery to its address shown on the Note Register or by such other delivery system as the Trustee agrees to accept. Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders.

(d) Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

(e) Notwithstanding any other provision herein, where this Indenture provides for notice of any event to any Holder of an interest in a Global Note (whether by mail or otherwise), such notice shall be sufficiently given if given to the Depositary for such Note (or its designee), according to the applicable procedures of such Depositary, if any, prescribed for the giving of such notice.

(f) The Trustee agrees to accept and act upon notice, instructions or directions pursuant to this Indenture sent by unsecured facsimile or electronic transmission; *provided, however*, that (1) the party providing such written notice, instructions or directions, subsequent to such transmission of written instructions, shall provide the originally executed instructions or directions to the Trustee in a timely manner, and (2) such originally executed notice, instructions or directions shall be signed by an authorized representative of the party providing such notice, instructions or directions. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reasonable reliance upon and compliance with such notice, instructions or directions notwithstanding such notice, instructions or directions conflict or are inconsistent with a subsequent notice, instructions or directions.

(g) If a notice or communication is sent in the manner provided above within the time prescribed, it is duly given, whether or not the addressee receives it.

(h) If the Issuer mails a notice or communication to Holders, it shall mail a copy to the Trustee and each Agent at the same time.

Section 13.02 Certificate and Opinion as to Conditions Precedent.

Upon any request or application by the Issuer or any Guarantor to the Trustee to take any action under this Indenture, including any action as an Agent, the Issuer or such Guarantor, as the case may be, shall furnish to the Trustee, at the Trustee's request, either or both of:

(1) an Officers' Certificate in form and substance reasonably satisfactory to the Trustee (which shall include the statements set forth in Section 13.03) stating that, in the opinion of the signer(s), all conditions precedent and covenants, if any, provided for in this Indenture relating to the proposed action have been complied with; and

(2) an Opinion of Counsel in form and substance reasonably satisfactory to the Trustee (which shall include the statements set forth in Section 13.03) stating that, in the opinion of such counsel, all such conditions precedent and covenants have been complied with.

Section 13.03 Statements Required in Certificate or Opinion.

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include:

(1) a statement that the Person making such certificate or opinion has read such covenant or condition;

(2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(3) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been complied with (and, in the case of an Opinion of Counsel, may be limited to reliance on an Officers' Certificate as to matters of fact); and

(4) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been complied with.

Section 13.04 Rules by Trustee and Agents.

The Trustee may make reasonable rules for action by or at a meeting of Holders. The Registrar or Paying Agent may make reasonable rules and set reasonable requirements for its functions.

Section 13.05 No Personal Liability of Directors, Officers, Employees, Members, Partners and Stockholders.

No past, present or future director, officer, employee, incorporator, member, partner or stockholder of the Issuer or any Guarantor, as such, shall have any liability for any Obligations of the Issuer or any Guarantor (other than the Issuer in respect of the Notes and each Guarantor in respect of its Note Guarantee) under the Notes, the Note Guarantees or this Indenture or for any claim based on, in respect of, or by reason of, such Obligations or their creation.

Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes.

Section 13.06 Governing Law.

THIS INDENTURE, THE NOTES AND ANY NOTE GUARANTEE WILL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

Section 13.07 Waiver of Jury Trial.

THE ISSUER AND EACH OF THE GUARANTORS, THE COLLATERAL AGENT AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES, THE NOTE GUARANTEES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 13.08 Force Majeure.

In no event shall the Trustee or any Agent be responsible or liable for any failure or delay in the performance of its Obligations under this Indenture arising out of or caused by, directly or indirectly, forces beyond its reasonable control, including without limitation strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software or hardware) services; it being understood that the Trustee and each Agent shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 13.09 No Adverse Interpretation of Other Agreements.

This Indenture may not be used to interpret any other indenture, loan or debt agreement of the Issuer or its Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

Section 13.10 Successors.

All agreements of the Issuer in this Indenture and the Notes shall bind its successors. All agreements of the Trustee in this Indenture shall bind its successors. All agreements of each Guarantor in this Indenture shall bind its successors, except as otherwise provided in Section 11.06.

Section 13.11 Severability.

In case any provision in this Indenture or in the Notes shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 13.12 Counterpart Originals.

The parties may sign any number of copies of this Indenture. Each signed copy shall be an original, but all of them together represent the same agreement.

Section 13.13 Table of Contents, Headings, etc.

The Table of Contents and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and shall in no way modify or restrict any of the terms or provisions hereof.

Section 13.14 Facsimile and PDF Delivery of Signature Pages.

The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

Section 13.15 U.S.A. PATRIOT Act.

The parties hereto acknowledge that in accordance with Section 326 of the U.S.A. PATRIOT Act, the Trustee is required to obtain, verify, and record information that identifies each Person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Indenture agree that they shall provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the U.S.A. PATRIOT Act.

Section 13.16 Payments Due on Non-Business Days.

In any case where any Payment Date, redemption date or repurchase date or the Stated Maturity of the Notes shall not be a Business Day, then (notwithstanding any other provision of this Indenture or of the Notes) payment of principal, premium, if any, or interest on the Notes need not be made on such date, but may be made on the next succeeding Business Day with the same force and effect as if made on the applicable Payment Date, redemption date or repurchase date, or at the Stated Maturity of the Notes, *provided* that no interest will accrue for the period from and after such Payment Date, redemption date, repurchase date or Stated Maturity, as the case may be.

Section 13.17 Effectiveness of Indenture

No party shall have any rights, obligations or other benefits or responsibilities hereunder unless and until such time as the parties have issued the Notes hereunder in connection with the Closing (as defined in the APA), and the Closing has occurred; *provided* that the Trustee shall be entitled to an Officers' Certificate and Opinion of Counsel that such closing has occurred and that all conditions precedent have been satisfied.

[*Signatures on following page*]

ERP IRON ORE, LLC

By

By: _____
Name:
Title:

ERP COMPLIANT COKE, LLC

By

By: _____
Name:
Title:

THOMAS MATTHEW CLARKE, as a Guarantor

By

By: _____
Name: Thomas Matthew Clarke

ANA MERCEDES CLARKE, as a Guarantor

By

By: _____
Name: Ana Mercedes Clarke

WILMINGTON SAVINGS FUND SOCIETY, FSB
as Trustee

By: _____
Name:
Title:

SCHEDULE A

EXISTING INDEBTEDNESS

[None]

SCHEDULE 6.02

MECHANICS LIENHOLDERS

Indiana Pellet Plant

Twin City Fan Companies, Ltd.

Solid Platforms, Inc.

Solid Platforms, Inc.

Northern Industrial Erectors, Inc.

Hammerlund's Champion Steel, Inc. d/b/a Champion Steel

Fastenal Company

Accu-Dig, Inc.

Xtreme Contractors Co., LLC

Midwest Constructors, LLC

Wesco Distribution, Inc.

One Source Equipment Rentals, LLC

Central Rent-A-Crane

Ferguson Enterprises, Inc.

Kelly Construction of Indiana, Inc.

Shambaugh & Son L.P.

Plant 4

A.W. Kuettel

Ferguson Enterprises, Inc.

Hammerlund's Champion Steel, Inc., d/b/a Champion Steel

Hammerlund Construction

Hunt Electric Corporation

Ironman Concrete Pumping, Inc.

Jamar Company

JK Mechanical Contractors, Inc.

John J. Morgan Company

K Building Components, Inc.

LeJeune Steel Company

Minnesota Industries, Inc.

Noramco Engineering Corporation

Northern Industrial Erectors

Parsons Electric LLC

Range Electric Inc.

Rapids Process Equipment, Inc.

Scheck Industrial Corp.

Toltz, King Duvall Anderson and Associates, Inc. d/b/a TKDA

Trane US Inc.

United Rentals (North America)

Viking Electric Supply

Wesco Distribution

Plant 2

Ferguson Enterprises, Inc.

Rapids Process Equipment, Inc.

Viking Electric Supply Inc.

Hammerlund's Champion Steel, Inc. d/b/a Champion Steel

Hammerlund Construction

Wesco Distribution, Inc.

Plant 1

Ferguson Enterprises, Inc.

Hammerlund's Champion Steel, Inc. d/b/a Champion Steel

Jessie Loadout

Noramco Engineering

Toltz, King, Duval, Anderson & Associates, Inc.

Ulland Brothers, Inc.

Viking Electric Supply, Inc.

Hammerlund's Champion Steel, Inc. d/b/a Champion Steel

Hammerlund's Champion Steel, Inc. d/b/a Champion Steel

Hammerlund Construction

APPENDIX A

PROVISIONS RELATING TO NOTES

Section 1.1 Definitions.

(a) Capitalized Terms.

Capitalized terms used but not defined in this Appendix A have the meanings given to them in this Indenture. The following capitalized terms have the following meanings:

"Applicable Procedures" means, with respect to any transfer or transaction involving a Global Note or beneficial interest therein, the rules and procedures of the Depositary for such Global Note, Euroclear or Clearstream, in each case to the extent applicable to such transaction and as in effect from time to time.

"Clearstream" means Clearstream Banking, Société Anonyme, or any successor securities clearing agency.

"Distribution Compliance Period," with respect to any Note, means the period of 40 consecutive days beginning on and including the later of (a) the day on which such Note is first offered to Persons other than distributors (as defined in Regulation S) in reliance on Regulation S, notice of which day shall be promptly given by the Issuer to the Trustee, and (b) the date of issuance with respect to such Note or any predecessor of such Note.

"Euroclear" means Euroclear Bank S.A./N.Y., as operator of Euroclear systems Clearance System or any successor securities clearing agency.

"IAI" means an institution that is an "accredited investor" as described in Rule 501(a)(1), (2), (3) or (7) under the Securities Act and is not a QIB.

"QIB" means a "qualified institutional buyer" as defined in Rule 144A.

"Regulation S" means Regulation S promulgated under the Securities Act.

"Rule 144" means Rule 144 promulgated under the Securities Act.

"Rule 144A" means Rule 144A promulgated under the Securities Act.

"Unrestricted Global Note" means any Note in global form that does not bear or is not required to bear the Restricted Notes Legend.

"U.S. Person" means a "U.S. person" as defined in Regulation S.

(b) Other Definitions.

Term:	Defined in Section:
"Agent Members"	2.1(b)
"Definitive Notes Legend"	2.2(e)
"ERISA Legend"	2.2(e)
"Global Notes"	2.1(a)
"Global Notes Legend"	2.2(e)
"IAI Global Note"	2.1(a)
"Regulation S Global Note"	2.1(a)
"Restricted Notes Legend"	2.2(e)
"Rule 144A Global Note"	2.1(a)

Section 2.1 Form and Dating

(a) *Global Notes*. Rule 144A Notes shall be issued initially in the form of one or more permanent global Notes in definitive, fully registered form, numbered RA-1 upward (collectively, the "Rule 144A Global Note") and Regulation S Notes shall be issued initially in the form of one or more global Notes, numbered RS-1 upward (collectively, the "Regulation S Global Note"), in each case without interest coupons and bearing the Global Notes Legend and Restricted Notes Legend, which shall be deposited on behalf of the purchasers of the Notes represented thereby with the Custodian, and registered in the name of the Depositary or a nominee of the Depositary, duly executed by the Issuer and authenticated by the Trustee as provided in the Indenture. One or more global Notes in definitive, fully registered form without interest coupons and bearing the Global Notes Legend and the Restricted Notes Legend, numbered RIAI-1 upward (collectively, the "IAI Global Note") shall also be issued at the request of the Trustee, deposited with the Custodian, and registered in the name of the Depositary or a nominee of the Depositary, duly executed by the Issuer and authenticated by the Trustee as provided in this Indenture to accommodate transfers of beneficial interests in the Notes to IAIs subsequent to the initial distribution. The Rule 144A Global Note, the IAI Global Note, the Regulation S Global Note and any Unrestricted Global Note are each referred to herein as a "Global Note" and are collectively referred to herein as "Global Notes." Each Global Note shall represent such of the outstanding Notes as shall be specified in the "Schedule of Exchanges of Interests in the Global Note" attached thereto and each shall provide that it shall represent the aggregate principal amount of Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be reduced or increased, as applicable, to reflect exchanges, redemptions or increases due to any PIK Payments. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the aggregate principal amount of outstanding Notes represented thereby shall be made by the Trustee or the Custodian, at the direction of the Trustee, in accordance with instructions given by the Holder thereof as required by Section 2.06 of this Indenture and Section 2.2(c) of this Appendix A.

(b) *Book-Entry Provisions*. This Section 2.1(c) shall apply only to a Global Note deposited with or on behalf of the Depositary.

The Issuer shall execute and the Trustee shall, in accordance with this Section 2.1(c) and Section 2.02 of this Appendix A and pursuant to an Authentication Order, authenticate and deliver initially one or more Global Notes that (i) shall be registered in the name of the Depositary for such Global Note or Global Notes or the nominee of such Depositary and (ii) shall be delivered by the Trustee to such Depositary or pursuant to such Depositary's instructions or held by the Trustee as Custodian.

Members of, or participants in, the Depositary ("Agent Members") shall have no rights under the Indenture with respect to any Global Note held on their behalf by the Depositary or by the Trustee as Custodian or under such Global Note, and the Depositary may be treated by the Issuer, the Trustee and any agent of the Issuer or the Trustee as the absolute owner of such Global Note for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Issuer, the Trustee or any agent of the Issuer or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depositary or impair, as between the Depositary and its Agent Members, the operation of customary practices of such Depositary governing the exercise of the rights of a holder of a beneficial interest in any Global Note.

(c) *Definitive Notes*. Except as provided in Section 2.2 or Section 2.3 of this Appendix A, owners of beneficial interests in Global Notes shall not be entitled to receive physical delivery of Definitive Notes.

Section 2.2 Transfer and Exchange.

(a) *Transfer and Exchange of Definitive Notes for Definitive Notes*. When Definitive Notes are presented to the Registrar with a request:

(i) to register the transfer of such Definitive Notes; or

(ii) to exchange such Definitive Notes for an equal principal amount of Definitive Notes of other authorized denominations,

the Registrar shall register the transfer or make the exchange as requested if its reasonable requirements for such transaction are met; *provided, however*, that the Definitive Notes surrendered for registration of transfer or exchange:

(1) shall be duly endorsed or accompanied by a written instrument of transfer in form reasonably satisfactory to the Issuer and the Registrar, duly executed by the Holder thereof or his attorney duly authorized in writing; and

(2) in the case of Transfer Restricted Notes, they are being transferred or exchanged pursuant to an effective registration statement under the Securities Act or pursuant to Section 2.2(b) of this Appendix A or otherwise in accordance with the Restricted Notes Legend, and are accompanied by a certification from the transferor in the form provided on the reverse side of the Form of Note in Exhibit A for exchange or registration of transfers and, as applicable, delivery of such legal opinions, certifications and other information as may be requested pursuant thereto.

(b) *Restrictions on Transfer of a Definitive Note for a Beneficial Interest in a Global Note*. A Definitive Note may not be exchanged for a beneficial interest in a Global Note except upon satisfaction of the requirements set forth below. Upon receipt by the Trustee of a Definitive Note, duly endorsed or accompanied by a written instrument of transfer in form reasonably satisfactory to the Issuer and the Registrar, together with:

(i) a certification from the transferor in the form provided on the reverse side of the Form of Note in Exhibit A for exchange or registration of transfers and, as applicable, delivery of such legal opinions, certifications and other information as may be requested pursuant thereto; and

(ii) written instructions directing the Trustee to make, or to direct the Custodian to make, an adjustment on its books and records with respect to such Global Note to reflect an increase in the aggregate principal amount of the Notes represented by the Global Note, such instructions to contain information regarding the Depositary account to be credited with such increase,

the Trustee shall cancel such Definitive Note and cause, or direct the Custodian to cause, in accordance with the standing instructions and procedures existing between the Depositary and the Custodian, the aggregate principal amount of Notes represented by the Global Note to be increased by the aggregate principal amount of the Definitive Note to be exchanged and shall credit or cause to be credited to the account of the Person specified in such instructions a beneficial interest in the Global Note equal to the principal amount of the Definitive Note so canceled. If the applicable Global Note is not then outstanding, the Issuer shall issue and the Trustee shall authenticate, upon an Authentication Order, a new applicable Global Note in the appropriate principal amount.

(c) *Transfer and Exchange of Global Notes*.

(i) The transfer and exchange of Global Notes or beneficial interests therein shall be effected through the Depositary, in accordance with the Indenture (including applicable restrictions on transfer set forth in Section 2.2(d) of this Appendix A, if any) and the procedures of the Depositary therefor. A transferor of a beneficial interest in a Global Note shall deliver to the Registrar a written order given in accordance with the Depositary's procedures containing information regarding the participant account of the Depositary to be credited with a beneficial interest in such Global Note, or another Global Note and such account shall be credited in accordance with such order with a beneficial interest in the applicable Global Note and the account of the Person making the transfer shall be debited by an amount equal to the beneficial interest in the Global Note being transferred.

(ii) If the proposed transfer is a transfer of a beneficial interest in one Global Note to a beneficial interest in another Global Note, the Registrar shall reflect on its books and records the date and an increase in the principal amount of the Global Note to which such interest is being transferred in an amount equal to the principal amount of the interest to be so transferred, and the Registrar shall reflect on its books and records the date and a corresponding decrease in the principal amount of the Global Note from which such interest is being transferred.

(iii) Notwithstanding any other provisions of this Appendix A (other than the provisions set forth in Section 2.3 of this Appendix A), a Global Note may not be transferred except as a whole and not in part if the transfer is by the Depositary to a nominee of the Depositary or by a nominee of the Depositary to the Depositary or another nominee of the Depositary or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary.

(d) *Restrictions on Transfer of Global Notes; Voluntary Exchange of Interests in Transfer Restricted Global Notes for Interests in Unrestricted Global Notes*.

(i) Transfers by an owner of a beneficial interest in a Rule 144A Global Note or an IAI Global Note to a transferee who takes delivery of such interest through another Transfer Restricted Global Note shall be made in accordance with the Applicable Procedures and the Restricted Notes Legend and only upon receipt by the Trustee of a certification from the transferor in the form provided on the reverse side of the Form of Note in Exhibit A for exchange or registration of transfers and, as applicable, delivery of such legal opinions, certifications and other information as may be requested pursuant thereto. In addition, in the case of a transfer of a beneficial interest in either a Regulation S Global Note or a Rule 144A Global Note for an interest in an IAI Global Note, the transferee shall furnish a signed letter substantially in the form of Exhibit B to the Trustee.

(ii) Prior to the expiration of the Distribution Compliance Period, (A) the Regulation S Global Note shall be a temporary global security for purposes of Rules 903 and 904 under the Securities Act, whether or not designated as such on the face of such Note, and (B) interests in the Regulation S Global Note may only be held through Euroclear or Clearstream. During the Distribution Compliance Period, beneficial ownership interests in the Regulation S Global Note may only be sold, pledged or transferred through Euroclear or Clearstream in accordance with the Applicable Procedures, the Restricted Notes Legend on such Regulation S Global Note and any applicable securities laws of any state of the U.S. Prior to the expiration of the Distribution Compliance Period, transfers by an owner of a beneficial interest in the Regulation S Global Note to a transferee who takes delivery of such interest through a Rule 144A Global Note or an IAI Global Note shall be made only in accordance with the Applicable Procedures and the Restricted Notes Legend and upon receipt by the Trustee of a written certification from the transferor of the beneficial interest in the form provided on the reverse side of the Form of Note in Exhibit A for exchange or registration of transfers. Such written certification shall no longer be required after the expiration of the Distribution Compliance Period. Upon the expiration of the Distribution Compliance Period, beneficial ownership interests in the Regulation S Global Note shall be transferable in accordance with applicable law and the other terms of the Indenture.

(iii) Upon the expiration of the Distribution Compliance Period, beneficial interests in the Regulation S Global Note may be exchanged for beneficial interests in an Unrestricted Global Note upon certification in the form provided on the reverse side of the Form of Note in Exhibit A for an exchange from a Regulation S Global Note to an Unrestricted Global Note.

(iv) Beneficial interests in a Transfer Restricted Note that is a Rule 144A

Global Note or an IAI Global Note may be exchanged for beneficial interests in an Unrestricted Global Note if the Holder certifies in writing to the Registrar that its request for such exchange is in respect of a transfer made in reliance on Rule 144 (such certification to be in the form set forth on the reverse side of the Form of Note in Exhibit A) and/or upon delivery of such legal opinions, certifications and other information as the Issuer or the Trustee may reasonably request.

(v) If no Unrestricted Global Note is outstanding at the time of a transfer contemplated by the preceding clauses (iii) and (iv), the Issuer shall issue and the Trustee shall authenticate, upon an Authentication Order, a new Unrestricted Global Note in the appropriate principal amount.

(e) *Legends*.

(i) Except as permitted by Section 2.2(d) and this Section 2.2(e) of this Appendix A, each Note certificate evidencing the Global Notes and the Definitive Notes (and all Notes issued in exchange therefor or in substitution thereof) shall bear a legend in substantially the following form (each defined term in the legend being defined as such for purposes of the legend only) ("Restricted Notes Legend"):

> THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, SUCH REGISTRATION. THE HOLDER OF THIS SECURITY, BY ITS ACCEPTANCE HEREOF, AGREES ON ITS OWN BEHALF AND ON BEHALF OF ANY INVESTOR ACCOUNT FOR WHICH IT HAS PURCHASED SECURITIES, TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY, PRIOR TO THE DATE (THE "RESALE RESTRICTION TERMINATION DATE") THAT IS [*IN THE CASE OF RULE 144A NOTES:* ONE YEAR AFTER THE LATER OF THE ORIGINAL ISSUE DATE OF THE ISSUANCE OF THE NOTES HEREUNDER AND THE LAST DATE ON WHICH THE ISSUER OR ANY AFFILIATE OF THE ISSUER WERE THE OWNER OF THIS SECURITY (OR ANY PREDECESSOR OF SUCH SECURITY)] [*IN THE CASE OF REGULATION S NOTES:* 40 DAYS AFTER THE LATER OF THE ORIGINAL ISSUE DATE OF THE ISSUANCE OF THE NOTES HEREUNDER, THE ORIGINAL ISSUE DATE OF THE ISSUANCE AND THE DATE ON WHICH THIS SECURITY (OR ANY PREDECESSOR OF SUCH SECURITY) WAS FIRST OFFERED TO PERSONS OTHER THAN DISTRIBUTORS (AS DEFINED IN RULE 902 OF REGULATION S UNDER THE SECURITIES ACT) IN

RELIANCE ON REGULATION S], ONLY (A) TO THE ISSUER OR ANY SUBSIDIARY THEREOF, (B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, (C) FOR SO LONG AS THE SECURITIES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT ("RULE 144A"), TO A PERSON IT REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (D) PURSUANT TO OFFERS AND SALES TO NON-U.S. PERSONS THAT OCCUR OUTSIDE THE UNITED STATES WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT, (E) TO AN INSTITUTIONAL "ACCREDITED INVESTOR" WITHIN THE MEANING OF RULE 501(a)(1), (2), (3) OR (7) UNDER THE SECURITIES ACT THAT IS NOT A QUALIFIED INSTITUTIONAL BUYER AND THAT IS PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF ANOTHER INSTITUTIONAL ACCREDITED INVESTOR, IN EACH CASE IN A MINIMUM PRINCIPAL AMOUNT OF SECURITIES OF AT LEAST $250,000 OR (F) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE ISSUER'S AND THE TRUSTEE'S RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSES (D), (E) OR (F) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/ OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM. THIS LEGEND SHALL BE REMOVED UPON THE REQUEST OF THE HOLDER AFTER THE RESALE RESTRICTION TERMINATION DATE. [*IN THE CASE OF REGULATION S NOTES:* BY ITS ACQUISITION HEREOF, THE HOLDER HEREOF REPRESENTS THAT IT IS NOT A U.S. PERSON NOR IS IT PURCHASING FOR THE ACCOUNT OF A U.S. PERSON AND IS ACQUIRING THIS SECURITY IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH REGULATION S UNDER THE SECURITIES ACT.]

Each Definitive Note shall bear the following additional legend ("Definitive Notes Legend"):

IN CONNECTION WITH ANY TRANSFER, THE HOLDER SHALL DELIVER TO THE REGISTRAR AND TRANSFER AGENT SUCH CERTIFICATES AND OTHER INFORMATION AS SUCH REGISTRAR AND TRANSFER AGENT MAY REASONABLY REQUIRE TO CONFIRM THAT THE TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS.

Each Global Note shall bear the following additional legend ("Global Notes Legend"):

> UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), NEW YORK, NEW YORK, TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO., OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.
>
> TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO DTC, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE INDENTURE REFERRED TO ON THE REVERSE HEREOF.

Each Note shall bear the following additional legend ("ERISA Legend"):

> BY ITS ACQUISITION OF THIS SECURITY, THE HOLDER THEREOF SHALL BE DEEMED TO HAVE REPRESENTED AND WARRANTED THAT EITHER (1) NO PORTION OF THE ASSETS USED BY SUCH HOLDER TO ACQUIRE OR HOLD THIS SECURITY CONSTITUTES THE ASSETS OF AN EMPLOYEE BENEFIT PLAN THAT IS SUBJECT TO TITLE I OF THE U.S. EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA"), OF A PLAN, INDIVIDUAL RETIREMENT ACCOUNT OR OTHER ARRANGEMENT THAT IS SUBJECT TO SECTION 4975 OF THE U.S. INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE") OR PROVISIONS UNDER ANY OTHER FEDERAL, STATE, LOCAL, NON-U.S. OR OTHER LAWS OR REGULATIONS THAT ARE SIMILAR TO SUCH PROVISIONS OF ERISA OR THE CODE ("SIMILAR LAWS"), OR OF AN ENTITY WHOSE UNDERLYING ASSETS ARE CONSIDERED TO INCLUDE "PLAN ASSETS" OF ANY SUCH PLAN, ACCOUNT OR ARRANGEMENT, OR (2) THE ACQUISITION AND HOLDING OF THIS SECURITY WILL NOT CONSTITUTE A NON-EXEMPT PROHIBITED TRANSACTION UNDER SECTION 406 OF ERISA OR

SECTION 4975 OF THE CODE OR A SIMILAR VIOLATION UNDER ANY APPLICABLE SIMILAR LAWS.

Any Note issued with original issue discount shall also bear the following additional legend ("OID Notes Legend"):

THIS NOTE HAS BEEN ISSUED WITH "ORIGINAL ISSUE DISCOUNT" (WITHIN THE MEANING OF SECTION 1272 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED) FOR U.S. FEDERAL INCOME TAX PURPOSES. UPON WRITTEN REQUEST, THE ISSUER SHALL PROMPTLY MAKE AVAILABLE TO ANY HOLDER OF THIS NOTE THE FOLLOWING INFORMATION: (1) THE ISSUE PRICE AND DATE OF THE NOTE, (2) THE AMOUNT OF ORIGINAL ISSUE DISCOUNT ON THE NOTE AND (3) THE YIELD TO MATURITY OF THE NOTE. HOLDERS SHOULD CONTACT JOE BROKING, CHIEF FINANCIAL OFFICER AT 102 NE 3RD ST, SUITE 120, GRAND RAPIDS, MINNESOTA 55744.

(ii) Upon any sale or transfer of a Transfer Restricted Note that is a Definitive Note, the Registrar shall permit the Holder thereof to exchange such Transfer Restricted Note for a Definitive Note that does not bear the Restricted Notes Legend and the Definitive Notes Legend and rescind any restriction on the transfer of such Transfer Restricted Note if the Holder certifies in writing to the Registrar that its request for such exchange is in respect of a transfer made in reliance on Rule 144 (such certification to be in the form set forth on the reverse side of the Form of Note in Exhibit A) and provides such legal opinions, certifications and other information as the Issuer or the Trustee may reasonably request.

(f) *Cancellation or Adjustment of Global Note*. At such time as all beneficial interests in a Global Note have either been exchanged for Definitive Notes, transferred in exchange for an interest in another Global Note, redeemed, repurchased or canceled, such Global Note shall be returned by the Depositary to the Trustee for cancellation or retained and canceled by the Trustee. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for Definitive Notes, transferred in exchange for an interest in another Global Note, redeemed, repurchased or canceled, the principal amount of Notes represented by such Global Note shall be reduced and an adjustment shall be made on the books and records of the Registrar (if it is then the Custodian for such Global Note) with respect to such Global Note, by the Registrar or the Custodian, to reflect such reduction.

(g) *Obligations with Respect to Transfers and Exchanges of Notes*.

(i) To permit registrations of transfers and exchanges, the Issuer shall execute and the Trustee shall authenticate, Definitive Notes and Global Notes at the Registrar's request.

(ii) No service charge shall be imposed in connection with any registration of transfer or exchange, but the Issuer may require payment of a sum sufficient to cover any transfer tax, assessments, or similar governmental charge payable in connection therewith (other

than any such transfer taxes, assessments or similar governmental charge payable upon exchanges pursuant to Sections 2.10 and 9.05 of this Indenture).

(iii) Neither the Issuer nor the Registrar shall be required to register the transfer of or to exchange any Note between a Record Date and the next succeeding Payment Date.

(iv) Prior to the due presentation for registration of transfer of any Note, the Issuer, the Trustee, the Paying Agent or the Registrar may deem and treat the Person in whose name a Note is registered as the absolute owner of such Note for the purpose of receiving payment of principal, premium, if any, and interest on such Note and for all other purposes whatsoever, whether or not such Note is overdue, and none of the Issuer, the Trustee, the Paying Agent or the Registrar shall be affected by notice to the contrary.

(v) All Notes issued upon any transfer or exchange pursuant to the terms of this Indenture shall evidence the same debt and shall be entitled to the same benefits under this Indenture as the Notes surrendered upon such transfer or exchange.

(vi) In order to effect any transfer or exchange of an interest in any Transfer Restricted Note for an interest in a Note that does not bear the Restricted Notes Legend and has not been registered under the Securities Act, if the Registrar so requests or if the Applicable Procedures so require, an Opinion of Counsel, in form reasonably acceptable to the Registrar to the effect that no registration under the Securities Act is required in respect of such exchange or transfer or the re-sale of such interest by the beneficial holder thereof, shall be required to be delivered to the Registrar and the Trustee.

(h) *No Obligation of the Trustee*.

(i) The Trustee shall have no responsibility or obligation to any beneficial owner of a Global Note, a member of, or a participant in the Depositary or any other Person with respect to the accuracy of the records of the Depositary or its nominee or of any participant or member thereof, with respect to any ownership interest in the Notes or with respect to the delivery to any participant, member, beneficial owner or other Person (other than the Depositary) of any notice (including any notice of redemption or repurchase) or the payment of any amount, under or with respect to such Notes. All notices and communications to be given to the Holders and all payments to be made to Holders under the Notes shall be given or made only to the registered Holders (which shall be the Depositary or its nominee in the case of a Global Note). The rights of beneficial owners in any Global Note shall be exercised only through the Depositary subject to the applicable rules and procedures of the Depositary. The Trustee may rely and shall be fully protected in relying upon information furnished by the Depositary with respect to its members, participants and any beneficial owners.

(ii) The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among Depositary participants, members or beneficial owners in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are

expressly required by, and to do so if and when expressly required by, the terms of this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Section 2.3 Definitive Notes.

(a) A Global Note deposited with the Depositary or with the Trustee as Custodian pursuant to Section 2.1 may be transferred to the beneficial owners thereof in the form of Definitive Notes in an aggregate principal amount equal to the principal amount of such Global Note, in exchange for such Global Note, only if (i) such transfer complies with Section 2.2 of this Appendix A and (ii) the Depositary notifies the Issuer that it is unwilling or unable to continue as a Depositary for such Global Note or if at any time the Depositary ceases to be a "clearing agency" registered under the Exchange Act and, in each case, a successor depositary is not appointed by the Issuer within 90 days of such notice or after the Issuer become aware of such cessation. Notwithstanding anything to the contrary in this Section 2.3, no Regulation S Global Note may be exchanged for a Definitive Note until the end of the Distribution Compliance Period applicable to such Regulation S Global Note and receipt by the Trustee and the Issuer of any certificates required by either of them pursuant to Rule 903(b)(3)(ii)(B) under the Securities Act.

(b) Any Global Note that is transferable to the beneficial owners thereof pursuant to this Section 2.3 shall be surrendered by the Depositary to the Trustee, to be so transferred, in whole or from time to time in part, without charge, and the Trustee shall authenticate and deliver, upon such transfer of each portion of such Global Note, an equal aggregate principal amount of Definitive Notes of authorized denominations. Any portion of a Global Note transferred pursuant to this Section 2.3 shall be executed, authenticated and delivered only in denominations of $2,000 and integral multiples of $1 in excess thereof and registered in such names as the Depositary shall direct. Any Definitive Note delivered in exchange for an interest in a Global Note that is a Transfer Restricted Note shall, except as otherwise provided by Section 2.2(e) of this Appendix A, bear the Restricted Notes Legend.

(c) The registered Holder of a Global Note may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take under this Indenture or the Notes.

(d) In the event of the occurrence of any of the events specified in Section 2.3(a) of this Appendix A, the Issuer shall promptly make available to the Trustee a reasonable supply of Definitive Notes in fully registered form without interest coupons.

EXHIBIT A

[FORM OF FACE OF NOTE]

[Insert the Restricted Notes Legend, if applicable, pursuant to the provisions of the Indenture]

[Insert the Global Notes Legend, if applicable, pursuant to the provisions of the Indenture]

[Insert the Definitive Notes Legend, if applicable, pursuant to the provisions of the Indenture]

[Insert the ERISA Legend, if applicable, pursuant to the provisions of the Indenture]

CUSIP [ ]

ISIN [ ][1]

[RULE 144A][REGULATION S][IAI] NOTE

Floating Rate Senior Secured Amortizing PIK Toggle Notes due 2019

No. [RA-] [RS-] [RIAI-] [Up to][2] [$___]

ERP IRON ORE, LLC

promises to pay to [CEDE & CO.][3] [_____] or registered assigns the principal sum [set forth on the Schedule of Exchanges of Interests in the Global Note attached hereto][4] [of $_____(_____ Dollars)][5] on December [•], 2019.

Interest Payment Dates: March 31, June 30, September 30 and December 31, beginning on, and inclusive of, March 31, 2017

Amortization Payment Dates: March 31, June 30, September 30 and December 31, beginning on, and inclusive of, June 30, 2017

Record Dates: March 15, June 15, September 15 and December 15

[1] Rule 144A Note CUSIP:
Rule 144A Note ISIN:
IAI Note CUSIP:
IAI Note ISIN:
Regulation S CUSIP:
Regulation S ISIN:
[2] Include in Global Notes
[3] Include in Global Notes
[4] Include in Global Notes
[5] Include in Definitive Notes

IN WITNESS HEREOF, the Issuer has caused this instrument to be duly executed.

Dated: December [•], 2016

ERP IRON ORE, LLC

By: _____
Name:
Title:

CERTIFICATE OF AUTHENTICATION

This is one of the Notes referred to in the within-mentioned Indenture:

WILMINGTON SAVINGS FUND SOCIETY, FSB
As Trustee

By: _____
Authorized Signatory:

Dated: December [•], 2016

[Reverse Side of Note]

Floating Rate Senior Secured Amortizing PIK Toggle Notes due 2019

Capitalized terms used herein shall have the meanings assigned to them in the Indenture referred to below unless otherwise indicated.

1. INTEREST AND AMORTIZATION AMOUNTS. (a) ERP Iron Ore, LLC (the "Issuer") promises to pay interest on the principal amount of this Note at a rate equal to the sum of (i) LIBOR plus (ii) 8.00%, reset quarterly, as determined by the Calculation Agent, from the above date until maturity. The Issuer will pay interest quarterly in arrears on March 31, June 30, September 30 and December 31 of each year, or if any such day is not a Business Day, on the next succeeding Business Day (each an "Interest Payment Date"). Interest on the Notes will accrue from the most recent date to which interest has been paid or, if no interest has been paid, from the date of issuance; provided that if there is no existing Default in the payment of interest, and if this Note is authenticated between a record date referred to on the face hereof and the next succeeding Interest Payment Date, interest shall accrue from such next succeeding Interest Payment Date; provided, further, that the first Interest Payment Date shall be March 31, 2017. The Issuer may elect, prior to the beginning of such Interest Period, to pay some or all interest as PIK Interest. If the Issuer elects to pay PIK Interest, interest on the Notes will be paid entirely (subject to the following sentence) by issuing PIK Notes or adding accrued and unpaid interest as of such Interest Payment Date to the principal amount of the Global Notes then outstanding ("PIK Interest"). In the event that the Issuer is entitled to and elects to pay Partial PIK Interest for an Interest Period, each Holder shall be entitled to receive Cash Interest in respect of the applicable percentage of the principal amount of the Notes held by such Holder on the relevant Record Date and PIK Interest in respect of the remaining percentage of the principal amount of the Notes held by such Holder on the relevant Record Date. Following an increase in the principal amount of the Global Notes as a result of a PIK Payment, the Global Notes will bear interest on such increased principal amount from and after the date of such PIK Payment. Unless the context requires otherwise, references to Notes or the "principal" or the "principal amount" of Notes, including for purposes of calculating any redemption price or redemption amount, include any increase in the principal amount of the Global Notes as a result of a PIK Payment. The Issuer shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal and premium, if any, from time to time on demand at a rate that is 2.0% per annum in excess of the rate then in effect; it shall pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest and Additional Amounts (without regard to any applicable grace periods) from time to time on demand at the same rate to the extent lawful. The Issuer promises to pay Amortization Amounts on each Amortization Payment Date as set forth in Section 4.01 of the Indenture.

b. The rate of interest shall be reset on the first day of each Interest Period other than the Initial Interest Period.

c. On or before each Calculation Date, the Calculation Agent shall determine the Applicable Rate and notify the Trustee and the Paying Agent.

d. The Calculation Agent shall, upon the written request of any Holder of the Notes, provide the interest rate then in effect with respect to the Notes.

e. All percentages resulting from any calculation of any interest rate for the Notes shall be rounded, if necessary, to the nearest one hundred thousandth of a percentage point, with five one-millionths of a percentage point rounded upward (e.g., 3.876545% (or .03876545) would be rounded to 3.87655% (or .0387655)), and all United States dollar amounts shall be rounded to the nearest cent, with one-half cent being rounded upward.

f. Set forth below is a summary of certain of the defined terms used in this Note relating to the calculation of interest on the Notes:

"Business Day" means each day that is not a Saturday, Sunday or other day on which banking institutions in New York, New York are authorized or required by law to close.

"Calculation Date" means, with respect to any Interest Determination Date, the earlier of (i) the tenth calendar day after such Interest Determination Date, or, if any such day is not a Business Day, the next succeeding Business Day, and (ii) the Business Day immediately preceding the applicable Interest Payment Date or the maturity date, as the case may be.

"Interest Determination Date" for an Interest Period shall be the second Business Day preceding the first day of such Interest Period (or, in the case of the Initial Interest Period, the second Business Day preceding the date of the original issuance of Notes hereunder).

"Initial Interest Period" means the date of the issuance of the initial Notes issued under the Indenture through March 30, 2017.

"Interest Period" means the period commencing on an Interest Payment Date (or, in the case of the Initial Interest Period, commencing on the date of the issuance of the Notes under the Indenture) and ending on the day preceding the next following Interest Payment Date or the redemption date, as applicable.

"LIBOR means, with respect to any Interest Determination Date, the London interbank offered rate as administered by ICE Benchmark Administration Limited (or any other Person that takes over the administration of such rate) for deposits in immediately available funds in United States dollars having a maturity of three months as displayed on the Bloomberg screen page that displays such rate, or on the appropriate page or screen of such other comparable information service that publishes such rate from time to time as selected by the Calculation Agent in its discretion (and in consultation with the Issuer) on that Interest Determination Date. If no rate appears, in respect of that Interest Determination Date, the Calculation Agent shall request the principal London offices of each of four major reference banks in the London interbank market, as selected by the Calculation Agent, to provide the Calculation Agent with its offered quotation for deposits in United States dollars for the period of three months, commencing on the second London Business Day following such Interest Determination Date, to prime banks in the London interbank market at approximately 11:00 a.m., London time, on that Interest Determination Date and in a principal amount that is representative for a single transaction in United States dollars in that market at that time. If at least two quotations are provided, then LIBOR on that Interest Determination Date shall be the arithmetic mean of those quotations. If fewer than two quotations are provided, then LIBOR on the

Interest Determination Date shall be the arithmetic mean of the rates quoted at approximately 11:00 a.m., in the City of New York, on the Interest Determination Date by three major banks in the City of New York selected by the Calculation Agent for loans in United States dollars to leading European banks, having a three-month maturity and in a principal amount that is representative for a single transaction in United States dollars in that market at that time; provided, however, that if the banks selected by the Calculation Agent are not providing quotations in the manner described by this sentence, LIBOR shall be the same as the rate determined for the immediately preceding Interest Period. LIBOR will in no event be less than 0.00% per annum.

2. METHOD OF PAYMENT. By no later than 11:00 a.m. (New York City time) on the date on which any principal of, premium and Additional Amounts, if any, or interest on any Note is due and payable, the Issuer shall irrevocably deposit with the Paying Agent money sufficient to pay such principal, premium and Additional Amounts, if any, and/or interest (other than PIK Interest, which is payable as described above). The Issuer shall pay interest on the Notes and all applicable Amortization Amounts to the Persons who are registered holders of Notes at the close of business on March 15, June 15, September 15 and December 15 (whether or not a Business Day), as the case may be, immediately preceding the related Interest Payment Date, even if such Notes are canceled after such Record Date and on or before such Interest Payment Date, except as provided in Section 2.12 of the Indenture with respect to defaulted interest. Principal, premium and Additional Amounts, if any, and interest (other than PIK Interest, which is payable as described above) on the Notes shall be payable at the office or agency of the Issuer maintained for such purpose or, at the option of the Issuer, payment of interest and premium, if any, may be made by check mailed to the Holders at their respective addresses set forth in the Note Register; provided that payment by wire transfer of immediately available funds shall be required with respect to principal (including Amortization Amounts, as applicable), premium and Additional Amounts, if any, and interest (other than PIK Interest, which is payable as described above) on all Global Notes and all other Notes the Holders of which shall have provided wire transfer instructions to the Issuer or the Paying Agent at least ten Business Days prior to the applicable payment date. Such payment shall be in such coin or currency of the United States as at the time of payment is legal tender for payment of public and private debts.

3. PAYING AGENT, CALCULATION AGENT AND REGISTRAR. Initially, Wilmington Savings Fund Society, FSB, the Trustee under the Indenture, shall act as Paying Agent, Calculation Agent and Registrar. The Issuer may change any Paying Agent or Registrar without notice to the Holders. The Issuer may act in any such capacity.

4. INDENTURE. The Issuer issued the Notes under an Indenture, dated as of December [•], 2016 (as amended or supplemented from time to time, the "Indenture"), among the Issuer, the Guarantors named therein, the Trustee, the Collateral Agent, the Paying Agent, the Registrar and the Calculation Agent. This Note is one of a duly authorized issue of notes of the Issuer designated as its Floating Rate Senior Secured Amortizing PIK Toggle Notes due 2019. The terms of the Notes include those stated in the Indenture. The Notes are subject to all such terms, and Holders are referred to the Indenture for a statement of such terms. Any term used in this Note that is defined in the Indenture shall have the meaning assigned to it in the Indenture. To the extent any provision of this Note conflicts with the express provisions of the Indenture, the provisions of the Indenture shall govern and be controlling.

5. REDEMPTION AND REPURCHASE. The Notes are subject to optional redemption, and may be the subject of an Event of Default Redemption, as further described in the Indenture. The Issuer shall not be required to make mandatory redemption or sinking fund payments with respect to the Notes.

6. GUARANTEE. To guarantee the due and punctual payment of the principal, premium, if any, and interest (including post-filing or post-petition interest) on the Notes and all other amounts payable by the Issuer under the Indenture and the Notes when and as the same shall be due and payable, whether at maturity, by acceleration or otherwise, according to the terms of the Notes and the Indenture, the Guarantors have unconditionally Guaranteed (and future guarantors shall unconditionally Guarantee), jointly and severally, such obligations on a senior secured basis.

7. SECURITY. From the Issue Date, the Notes and the Guarantees will be secured by the Collateral, pursuant to the Security Documents. Reference is made to the Indenture and the Security Documents for terms relating to such security, including the release, termination and discharge thereof. The Issuer shall not be required to make any notation on this Note to reflect any grant of such security or any such release, termination or discharge.

8. DENOMINATIONS, TRANSFER, EXCHANGE. The Notes are in registered form without coupons in denominations of $2,000 and integral multiples of $1.00 in excess thereof. The transfer of Notes may be registered and Notes may be exchanged as provided in the Indenture. The Registrar and the Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents, and Holders shall be required to pay any taxes and fees required by law or permitted by the Indenture. The Issuer need not exchange or register the transfer of any Note or portion of a Note selected for redemption, except for the unredeemed portion of any Note being redeemed or repurchased in part. The Issuer need not exchange or register the transfer of any Note during a period of 15 days before a mailing of notice of redemption of Notes or during a period between a Record Date and the next succeeding Interest Payment Date or Amortization Payment Date, as applicable.

9. PERSONS DEEMED OWNERS. The registered Holder of a Note may be treated as its owner for all purposes.

10. AMENDMENT, SUPPLEMENT AND WAIVER. The Indenture, the Note Guarantees or the Notes may be amended or supplemented as provided in the Indenture.

11. DEFAULTS AND REMEDIES. The Events of Default relating to the Notes are defined in Section 6.01 of the Indenture. Upon the occurrence of an Event of Default, the rights and obligations of the Issuer, the Guarantor, the Trustee and the Holders shall be as set forth in the applicable provisions of the Indenture.

12. AUTHENTICATION. This Note shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose until authenticated by the manual signature of the Trustee.

13. GOVERNING LAW. THIS NOTE WILL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

14. CUSIP AND ISIN NUMBERS. Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Issuer has caused CUSIP and ISIN numbers to be

printed on the Notes, and the Trustee may use CUSIP and ISIN numbers in notices of redemption as a convenience to Holders. No representation is made as to the accuracy of such numbers either as printed on the Notes or as contained in any notice of redemption and reliance may be placed only on the other identification numbers placed thereon.

15. ABBREVIATIONS. Customary abbreviations may be used in the name of Note Holder or an assignee, such as TEN COM (=tenants in common), TEN ENT (=tenants by the entireties), JT TEN (=joint tenants with rights of survivorship and not as tenants in common), CUST (=custodian), and U/G/M/A (=Uniform Gift to Minors Act). Additional abbreviations may also be used though not identified in the preceding list

The Issuer shall furnish to any Holder upon written request and without charge a copy of the Indenture. Requests may be made to the Issuer at the following address:

ERP Iron Ore, LLC
c/o ERP Compliant Fuels, LLC
15 Appledore Lane
Natural Bridge, Virginia 24578
Attention: Tom Clarke
Email: Tom.Clarke@kissito.org

ASSIGNMENT FORM

To assign this Note, fill in the form below:

(I) or (we) assign and transfer this Note to: _____
(Insert assignee's legal name)

_____
(Insert assignee's soc. sec. or tax I.D. no.)

_____
_____
_____
_____
(Print or type assignee's name, address and zip code)

and irrevocably appoint_____
to transfer this Note on the books of the Issuer. The agent may substitute another to act for him.

Date: _____

Your Signature: _____
(Sign exactly as your name appears on the face of this Note)

Signature Guarantee*: _____

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).

CERTIFICATE TO BE DELIVERED UPON EXCHANGE OR REGISTRATION OF TRANSFERS OF TRANSFER RESTRICTED NOTES

This certificate relates to $ _____ principal amount of Notes held in (check applicable space) _____ book-entry or _____definitive form by the undersigned.

The undersigned (check one box below):

- ❒ has requested the Trustee by written order to deliver in exchange for its beneficial interest in a Global Note held by the Depositary a Note or Notes in definitive, registered form of authorized denominations and an aggregate principal amount equal to its beneficial interest in such Global Note (or the portion thereof indicated above) in accordance with the Indenture; or

- ❒ has requested the Trustee by written order to exchange or register the transfer of a Note or Notes.

In connection with any transfer of any of the Notes evidenced by this certificate, the undersigned confirms that such Notes are being transferred in accordance with its terms:

CHECK ONE BOX BELOW

(1) ❒ to the Issuer or Subsidiary thereof; or

(2) ❒ to the Registrar for registration in the name of the Holder, without transfer; or

(3) ❒ pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "Securities Act"); or

(4) ❒ to a Person that the undersigned reasonably believes is a "qualified institutional buyer" (as defined in Rule 144A under the Securities Act ("Rule 144A")) that purchases for its own account or for the account of a qualified institutional buyer and to whom notice is given that such transfer is being made in reliance on Rule 144A, in each case pursuant to and in compliance with Rule 144A; or

(5) ❒ pursuant to offers and sales to non-U.S. persons that occur outside the United States within the meaning of Regulation S under the Securities Act (and if the transfer is being made prior to the expiration of the Distribution Compliance Period, the Notes shall be held immediately thereafter through Euroclear or Clearstream); or

(6) ❒ to an institutional "accredited investor" (as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act) that has furnished to the Trustee a signed letter containing certain representations and agreements; or

(7) ❒ Pursuant to Rule 144 under the Securities Act; or

(8) ❒ pursuant to another available exemption from registration under the Securities

Act.

Unless one of the boxes is checked, the Trustee will refuse to register any of the Notes evidenced by this certificate in the name of any Person other than the registered Holder thereof; provided, however, that if box (5), (6), (7) or (8) is checked, the Issuer or the Trustee may require, prior to registering any such transfer of the Notes, such legal opinions, certifications and other information as the Issuer or the Trustee have reasonably requested to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act.

_____

Your Signature

Date: _____

_____

Signature of
Guarantor

TO BE COMPLETED BY PURCHASER IF (4) ABOVE IS CHECKED.

The undersigned represents and warrants that it is purchasing this Note for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a "qualified institutional buyer" within the meaning of Rule 144A, and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Issuer as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned's foregoing representations in order to claim the exemption from registration provided by Rule 144A.

Dated: _____

_____

NOTICE: To be executed by an
executive officer
Name:
Title:

Signature Guarantee*: _____

* Participant in a recognized Signature Guarantee Medallion Program (or other signature guarantor acceptable to the Trustee).

TO BE COMPLETED IF THE HOLDER REQUIRES AN EXCHANGE FROM A REGULATION S GLOBAL NOTE TO AN UNRESTRICTED GLOBAL NOTE, PURSUANT TO SECTION 2.2(d)(iii) OF APPENDIX A TO THE INDENTURE[6]

The undersigned represents and warrants that either:

- ❒ the undersigned is not a dealer (as defined in the Securities Act) and is a non-U.S. person (within the meaning of Regulation S under the Securities Act); or
- ❒ the undersigned is not a dealer (as defined in the Securities Act) and is a U.S. person (within the meaning of Regulation S under the Securities Act) who purchased interests in the Notes pursuant to an exemption from, or in a transaction not subject to, the registration requirements under the Securities Act; or
- ❒ the undersigned is a dealer (as defined in the Securities Act) and the interest of the undersigned in this Note does not constitute the whole or a part of an unsold allotment to or subscription by such dealer for the Notes.

Date: _____ _____

Your Signature

[6] Include only for Regulation S Global Notes.

SCHEDULE OF EXCHANGES OF INTERESTS IN THE GLOBAL NOTE*

The initial outstanding principal amount of this Global Note is $_____. The following exchanges of a part of this Global Note for an interest in another Global Note or for a Definitive Note, or exchanges of a part of another Global Note or Definitive Note for an interest in this Global Note, have been made:

Date of Exchange	Amount of decrease in Principal Amount of this Global Note	Amount of increase in Principal Amount of this Global Note	Principal Amount of this Global Note following such decrease or increase	Signature of authorized signatory of Trustee, Depositary or Custodian

*This schedule should be included only if the Note is issued in global form.

EXHIBIT B

FORM OF TRANSFEREE LETTER OF REPRESENTATION

ERP Iron Ore, LLC
c/o ERP Compliant Fuels, LLC
15 Appledore Lane
Natural Bridge, Virginia 24578
Attention: Tom Clarke
Email: Tom.Clarke@kissito.org

Ladies and Gentlemen:

This certificate is delivered to request a transfer of $[_____] principal amount of the Floating Rate Senior Secured Amortizing PIK Toggle Notes due 2019 (the "Notes") of ERP Iron Ore, LLC, a Virginia limited liability company (the "Issuer").

Upon transfer, the Notes would be registered in the name of the new beneficial owner as follows:

Name: _____

Address: _____

Taxpayer ID Number: _____

The undersigned represents and warrants to you that:

1. We are an institutional "accredited investor" (as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act of 1933, as amended (the "Securities Act")), purchasing for our own account or for the account of such an institutional "accredited investor" at least $250,000 principal amount of the Notes, and we are acquiring the Notes, for investment purposes and not with a view to, or for offer or sale in connection with, any distribution in violation of the Securities Act. We have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of our investment in the Notes, and we invest in or purchase securities similar to the Notes in the normal course of our business. We, and any accounts for which we are acting, are each able to bear the economic risk of our or its investment.

2. We understand that the Notes have not been registered under the Securities Act and, unless so registered, may not be sold except as permitted in the following sentence. We agree on our own behalf and on behalf of any investor account for which we are purchasing Notes to offer, sell or otherwise transfer such Notes prior to the date that is one year after the later of the date of original issue and the last date on which the Issuers or any affiliate of the Issuers was the owner of such Notes (or any predecessor thereto) (the "Resale Restriction Termination Date") only in accordance

with the Restricted Notes Legend (as such term is defined in the indenture under which the Notes were issued) on the Notes and any applicable securities laws of any state of the United States. The foregoing restrictions on resale will not apply subsequent to the Resale Restriction Termination Date. If any resale or other transfer of the Notes is proposed to be made pursuant to the preceding clause prior to the Resale Restriction Termination Date, the transferor shall deliver a letter from the transferee substantially in the form of this letter to the Issuers and the Trustee, which shall provide, among other things, that the transferee is an institutional "accredited investor" within the meaning of Rule 501(a)(1), (2), (3) or (7) under the Securities Act and that it is acquiring such Notes for investment purposes and not for distribution in violation of the Securities Act. Each purchaser acknowledges that the Issuers and the Trustee reserve the right prior to the offer, sale or other transfer prior to the Resale Restriction Termination Date of the Notes with respect to applicable transfers described in the Restricted Notes Legend to require the delivery of an opinion of counsel, certifications and/or other information satisfactory to the Issuers and the Trustee.

TRANSFEREE: _____,

by: _____

EXHIBIT C

FORM OF SUPPLEMENTAL INDENTURE
TO BE DELIVERED BY SUBSEQUENT GUARANTORS

Supplemental Indenture (this "Supplemental Indenture"), dated as of [_____] [__], 20[__], among [_____] (the "Guaranteeing Subsidiary"), a subsidiary of [_____], a [_____] company [(the "Issuer")] [(the "Coke Guarantor")][1] and [_____], as trustee (the "Trustee").

W I T N E S S E T H

WHEREAS, each of the Issuer and the Guarantor(s) (as defined in the Indenture referred to below) have heretofore executed and delivered to Wilmington Savings Fund Society, FSB, as trustee, an indenture (the "Indenture"), dated as of [•], 2016, providing for the issuance of $22,500,000 aggregate principal amount of Floating Rate Senior Secured Amortizing PIK Toggle Notes due 2019 (*provided* that the principal amount of the Notes authorized and outstanding may be increased in connection with PIK Interest) (the "Notes");

WHEREAS, the Indenture provides that under certain circumstances the Guaranteeing Subsidiary shall execute and deliver to the Trustee a supplemental indenture pursuant to which the Guaranteeing Subsidiary shall unconditionally Guarantee all of the Issuer's Obligations under the Notes and the Indenture on the terms and conditions set forth herein and under the Indenture; and

WHEREAS, pursuant to Section 9.01 of the Indenture, the Trustee is authorized to execute and deliver this Supplemental Indenture.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties mutually covenant and agree for the equal and ratable benefit of the Holders as follows:

1. Capitalized Terms. Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.

2. Guarantor. The Guaranteeing Subsidiary hereby agrees to be a Guarantor under the Indenture and to be bound by the terms of the Indenture applicable to Guarantors, including Article 11 thereof.

3. Governing Law. THIS SUPPLEMENTAL INDENTURE WILL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

4. Waiver of Jury Trial. EACH OF THE GUARANTEEING SUBSIDIARY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS

[1] TBD - whether the new guaranteeing subsidiary is a subsidiary of the Issuer or the original Guarantor.

SUPPLEMENTAL INDENTURE, THE INDENTURE, THE NOTES, THE NOTE GUARANTEES OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

5. Counterparts and Delivery. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. The exchange of copies of this Supplemental Indenture and of signature pages by facsimile or portable document format ("PDF") transmission shall constitute effective execution and delivery of this Supplemental Indenture as to the parties hereto and may be used in lieu of the original Supplemental Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

6. Headings. The headings of the Sections of this Supplemental Indenture have been inserted for convenience of reference only, are not to be considered a part of this Supplemental Indenture and shall in no way modify or restrict any of the terms or provisions hereof.

7. The Trustee. The Trustee shall not be responsible in any manner whatsoever for or in respect of the validity, sufficiency or adequacy of this Supplemental Indenture or for or in respect of the recitals contained herein, all of which recitals are made solely by the Guaranteeing Subsidiary and the Issuer.

[*Remainder of page intentionally left blank*]

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed, all as of the date first above written.

[NAME OF GUARANTEEING SUBSIDIARY]

By: _____
Name:
Title:

[_____], as Trustee

By: _____
Name:
Title:

EXHIBIT D

ISSUER NOTIFICATION OF PIK INTEREST ELECTION.

[•], 2016

This notification is delivered to you, [_____], Trustee (the "Trustee") under the indenture dated [•], 2016, among ERP Iron Ore, LLC (the "Issuer"), the guarantor(s) listed thereunder, and the Trustee (as amended, supplemented, or otherwise modified from time to time, the "Indenture"), in connection with the Issuer's option to elect to pay PIK Interest as set forth in Section 2.14(a) of the Indenture. Capitalized terms used and not otherwise defined herein shall have the meanings assigned thereto in the Indenture.

The undersigned Officer of the Issuer (the "Officer") hereby certifies that the undersigned is authorized to execute this notification on behalf of the Issuer (and not in a personal capacity) and does hereby notify the Trustee and the Paying Agent, in the name and on behalf of the Issuer (and not in a personal capacity), that for the Interest Payment Date of [_____], 20[XX], the Issuer shall pay all or some of the interest on the Notes that will be due and payable on such Interest Payment Date by way of a PIK Payment.

[REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned have executed this Officer's Certificate as of the date first written above.

By: _____

Name: _____
Title: _____

EXHIBIT E

ISSUER NOTIFICATION AND DIRECTION TO TRUSTEE UNDER SECTION 2.14(D) OF THE INDENTURE REGARDING THE PAYMENT OF PIK INTEREST.

[•], 2016

This notification and direction is delivered to you, [_____], Trustee (the "Trustee") under the indenture dated [•], 2016, among ERP Iron Ore, LLC (the "Issuer"), the guarantor(s) listed thereunder, and the Trustee (as amended, supplemented, or otherwise modified from time to time, the "Indenture"), in connection with the payment of PIK Interest as set forth in Section 2.14(d) of the Indenture. Capitalized terms used and not otherwise defined herein shall have the meanings assigned thereto in the Indenture.

The undersigned Officer of the Issuer (the "Officer") hereby certifies that the undersigned is authorized to execute this notification on behalf of the Issuer (and not in a personal capacity) and does hereby notify the Trustee and the Paying Agent, in the name and on behalf of the Issuer (and not in a personal capacity), that for the Interest Payment Date of [_____], 20[XX], the Issuer is obligated to pay interest on the Notes in the aggregate amount of $[_____] and the Issuer shall pay $[_____] in PIK Interest.

The Officer hereby authorizes and directs the Trustee to increase the principal amount of the Global Notes and/or to authenticate new Definitive Notes in respect of the PIK Interest to be paid on such Interest Payment Date in accordance with Section 2.14(d) of the Indenture.

[REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned have executed this Officer's Certificate as of the date first written above.

By: _____

Name: _____
Title: _____

EXHIBIT H

Form of New Security Agreement

SECURITY AGREEMENT

made by

ERP IRON ORE, LLC

and certain other Grantors party hereto from time to time,

in favor of

Wilmington Savings Fund Society, FSB
as Collateral Agent

Dated as of [●], 2016

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SCHEDULES

SECURITY AGREEMENT dated as of [●], 2016, among the Grantors (as defined below) and Wilmington Savings Fund Society, FSB, as trustee under the Indenture (defined below) (in such capacity, the "Trustee") and as collateral agent for the Secured Parties (in such capacity, the "Collateral Agent") on behalf of the registered holders (the "Holders") of the Floating Rate Senior Secured Amortizing Notes issued pursuant to the indenture, dated as of [•], 2016 (as amended, supplemented or otherwise modified from time to time, the "Indenture"), among ERP Iron Ore LLC, a Virginia limited liability company (the "Issuer"), the Guarantors listed on the signature pages thereto and Wilmington Savings Fund Society, FSB, as Trustee, Collateral Agent, paying agent (in such capacity, the "Paying Agent"), registrar (in such capacity, the "Registrar") and calculation agent (in such capacity, the "Calculation Agent").

W I T N E S S E T H:

WHEREAS, on May 5, 2015, Magnetation LLC (the "Debtor Company") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq., in the United States Bankruptcy Court for the District of Minnesota (the "Bankruptcy Court") and the Debtor Company and the Debtors have continued to operate their businesses and manage their properties as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

WHEREAS, the Issuer has duly authorized the creation and issuance of $22,500,000 aggregate principal amount of its Floating Rate Senior Secured Amortizing PIK Toggle Notes due December [•], 2019 (the "Notes") pursuant to the Indenture; and

WHEREAS, the Grantors will derive substantial benefits from the issuance of the Notes pursuant to the Indenture, and are willing to execute and deliver this Agreement in order to secure their Obligations under the Indenture and the other Notes Documents;

WHEREAS, pursuant to the Indenture, the Issuer has issued its Notes upon the terms and subject to the conditions set forth therein.

NOW, THEREFORE, the Grantors who are signatories hereto and the Collateral Agent agree as follows for the benefit of each other and for the equal and ratable benefit of the Holders of the Notes.

SECTION 1. DEFINED TERMS

1.1 Definitions. (a) Unless otherwise defined herein, terms defined in the Indenture and used herein shall have the meanings given to them in the Indenture, and the following terms are used herein as defined in the New York UCC: Accounts, As-Extracted Collateral, Certificated Security, Chattel Paper, Commercial Tort Claims, Documents, Equipment, Farm Products, Fixtures, General Intangibles, Instruments, Inventory, Letter-of-Credit Rights and Supporting Obligations.

(b) The following terms shall have the following meanings:

"Agreement": this Security Agreement, as the same may be amended, supplemented or otherwise modified from time to time.

"COKE": ERP Compliant COKE, LLC, a Delaware limited liability company, and its successors.

"Coke Plant": means (i) a 244-acre parcel of real property located in Birmingham, Alabama on which coke manufacturing facilities, including coke ovens, railyard and water treatment assets, are operated by COKE to produce, among other things, blast furnace coke, foundry coke, and industrial coke, and (ii) all fixtures located on such real property.

"Collateral": means, collectively, the Coke Collateral and the Issuer Collateral.

"Collateral Account": any collateral account established by the Collateral Agent as provided in Section 6.1 or 6.4.

"Commodity Exchange Act": the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"Contract" means any written contracts and agreements between any Grantor and any Person (in each case, whether third party or intercompany) as the same may be amended, extended, restated, amended and restated, supplemented, replaced or otherwise modified from time to time, including (i) all rights of any Grantor to receive moneys due and to become due to it thereunder or in connection therewith, (ii) all rights of any Grantor to receive proceeds of any insurance, indemnity, warranty or guaranty with respect thereto, (iii) all rights of any Grantor to damages arising thereunder and (iv) all rights of any Grantor to terminate and to perform and compel performance of, such contracts and to exercise all remedies thereunder.

"Copyrights": (i) all copyrights arising under the laws of the United States, any other country or any political subdivision thereof, whether registered or unregistered and whether published or unpublished (including, without limitation, those listed in Schedule 5), all registrations and recordings thereof, and all applications in connection therewith, including, without limitation, all registrations, recordings and applications in the United States Copyright Office, and (ii) the right to obtain all renewals thereof.

"Copyright Licenses": any written agreement naming any Grantor as licensor or licensee (including, without limitation, those listed in Schedule 5), granting any right under any Copyright, including, without limitation, the grant of rights to manufacture, distribute, exploit and sell materials derived from any Copyright.

"Deposit Account": as defined in the Uniform Commercial Code of any applicable jurisdiction and, in any event, including, without limitation, any demand, time, savings, passbook or like account maintained with a depositary institution.

"Grantor" means the Issuer, each Guarantor that is a party hereto and each Guarantor that becomes a party to this Agreement after the date hereof.

"Holders": as defined in the preamble hereto.

"Indenture": as defined in the preamble hereto.

"Intellectual Property": the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States, multinational or foreign laws or otherwise, including, without limitation, the Copyrights, the Copyright Licenses, the Patents, the Patent Licenses, the Trademarks and the Trademark Licenses, and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

"Investment Property": the collective reference to (i) all "investment property" as such term is defined in Section 9-102(a)(49) of the New York UCC and (ii) whether or not constituting "investment property" as so defined, all Pledged Notes and all Pledged Shares.

"Issuer": as defined in the preamble hereto.

"Magnetation Contracts" means any material written contract or agreement between any Grantor and any Person (in each case, whether third party or intercompany) assumed by a Grantor from one or more of the Debtors in connection with the transactions described in the APA and related agreements.

"Material Adverse Effect": a material adverse effect on (a) the business, property, operations or condition (financial or otherwise) of the Issuer and its Subsidiaries taken as a whole or (b) the validity or enforceability of the Indenture or any of the other Notes Documents or the rights or remedies of the Trustee, Collateral Agent or the other Secured Parties hereunder or thereunder.

"New York UCC": the Uniform Commercial Code as from time to time in effect in the State of New York.

"Notes": as defined in the preamble hereto.

"Notes Documents" means the Notes, the Guarantees, the Indenture and the related Collateral Documents.

"Obligations": mean the Obligations in respect of the Notes, the Guarantees, the Indenture and the related Collateral Documents.

"Patents": (i) all letters patent of the United States, any other country or any political subdivision thereof, all reissues and extensions thereof and all goodwill associated therewith, including, without limitation, any of the foregoing referred to in Schedule 5, (ii) all applications for letters patent of the United States or any other country and all divisions, continuations and continuations-in-part thereof, including, without limitation, any of the foregoing referred to in Schedule 5, and (iii) all rights to obtain any reissues or extensions of the foregoing.

"Patent License": all agreements, whether written or oral, providing for the grant by or to any Grantor of any right to manufacture, use or sell any invention covered in whole or in part by a Patent, including, without limitation, any of the foregoing referred to in Schedule 5.

"Pledged Notes": all promissory notes listed on Schedule 1 and all other promissory notes issued to or held by any Grantor (other than promissory notes issued in connection with extensions of trade credit by any Grantor in the ordinary course of business).

"Pledged Shares": the shares of Capital Stock listed on Schedule 1, together with any other shares, stock certificates, options, interests or rights of any nature whatsoever in respect of the Capital Stock of any Person that may be issued or granted to, or held by, any Grantor while this Agreement is in effect.

"Pledged Share Issuers": the collective reference to each issuer of any Investment Property.

"Proceeds": all "proceeds" as such term is defined in Section 9-102(a)(64) of the New York UCC and, in any event, shall include, without limitation, all dividends or other income from the Investment Property, collections thereon or distributions or payments with respect thereto.

"Receivable": any right to payment for goods sold or leased or for services rendered, whether or not such right is evidenced by an Instrument or Chattel Paper and whether or not it has been earned by performance (including, without limitation, any Account).

"Secured Parties": collectively, the Collateral Agent, the Trustee and each other Agent, the Holders, and the other Persons the Obligations owing to which are or are purported to be secured by the Collateral under the terms of the Collateral Documents.

"Securities Act": the Securities Act of 1933, as amended.

"Trademarks": (i) all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos and other source or business identifiers, and all goodwill associated therewith, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all applications in connection therewith, whether in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country or any political subdivision thereof, or otherwise, and all common-law rights related thereto, including, without limitation, any of the foregoing referred to in Schedule 5, and (ii) the right to obtain all renewals thereof.

"Trademark License": any agreement, whether written or oral, providing for the grant by or to any Grantor of any right to use any Trademark, including, without limitation, any of the foregoing referred to in Schedule 5.

1.2 Other Definitional Provisions. (a) The words "hereof," "herein", "hereto" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section and Schedule references are to this Agreement unless otherwise specified.

(b) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

(c) Where the context requires, terms relating to the Collateral or any part thereof, when used in relation to a Grantor, shall refer to such Grantor's Collateral or the relevant part thereof.

SECTION 2. [RESERVED]

SECTION 3. GRANT OF SECURITY INTEREST

As collateral security for the prompt payment in full when due (whether at stated maturity, by acceleration or otherwise) of the Obligations,

3.1 Issuer Collateral. The Issuer hereby pledges and grants to the Collateral Agent, for the ratable benefit of the Secured Parties, a first-priority security interest in all of the Issuer's right, title and interest in the following property, assets and revenues, whether now owned or at any time hereafter acquired by the Issuer or in which the Issuer now has or at any time in the future may acquire any right, title or interest (collectively, the "Issuer Collateral"):

(a) all Accounts;

(b) all As-Extracted Collateral;

(c) all Chattel Paper;

(d) all Contracts;

(e) all Deposit Accounts;

(f) all Documents;

(g) all Equipment;

(h) all Fixtures;

(i) all General Intangibles;

(j) all Instruments;

(k) all Intellectual Property;

(l) all Inventory;

(m) all Investment Property;

(n) all Letter-of-Credit Rights;

(o) the Pledged Shares owned by the Issuer;

(p) all other property not otherwise described above (except for any property specifically excluded from any clause in this section above, and any property specifically excluded from any defined term used in any clause of this section above);

(q) all books and records pertaining to the Issuer Collateral; and

(r) to the extent not otherwise included, all Proceeds, Supporting Obligations and products of any and all of the foregoing and all collateral security and guarantees given by any Person with respect to any of the foregoing.

3.2 Coke Collateral. COKE hereby pledges and grants to the Collateral Agent, for the ratable benefit of the Secured Parties, a first-priority security interest in all of COKE's right, title and interest in the following property, assets and revenues, whether now owned or at any time hereafter acquired by COKE or in which COKE now has or at any time in the future may acquire any right, title or interest (collectively, the "Coke Collateral"):

(a) all Fixtures now or hereafter owned by COKE and attached to or installed in and used in connection with the Coke Plant;

(b) all books and records pertaining to the Coke Collateral; and

(c) to the extent not otherwise included, all Proceeds, Supporting Obligations and products of any and all of the foregoing and all collateral security and guarantees given by any Person with respect to any of the foregoing.

SECTION 4. REPRESENTATIONS AND WARRANTIES

Each Grantor (but with respect to Coke, limited to Section 4.1, 4.2, 4.3, 4.5 and 4.8) hereby represents and warrants to the Collateral Agent for the ratable benefit of the Secured Parties that:

4.1 Title; No Other Liens. Except for the security interest granted to the Collateral Agent for the ratable benefit of the Secured Parties pursuant to this Agreement and the other Liens permitted to exist on the Collateral by the Indenture, such Grantor owns each item of the Collateral free and clear of any and all Liens or claims of others. No financing statement or other public notice with respect to all or any part of the Collateral is on file or of record in any public office, except such as have been filed in favor of the Collateral Agent, for the ratable benefit of the Secured Parties, pursuant to this Agreement or as are permitted by the Indenture.

4.2 Perfected First Priority Liens. The security interests granted pursuant to this Agreement (a) upon the completion of the filings in the appropriate filing offices and other actions specified on Schedule 2 (which, in the case of all filings and other documents referred to on said Schedule, have been delivered to the Collateral Agent in completed and duly executed form) will constitute valid perfected security interests in all of the Collateral in favor of the Collateral Agent, for the ratable benefit of the Secured Parties, as collateral security for such Grantor's Obligations, enforceable in accordance with the terms hereof against all creditors of such Grantor and any Persons purporting to purchase any Collateral from such Grantor and (b) are prior to all other Liens on the Collateral in existence on the date hereof except for (i) unrecorded Liens permitted by the Indenture which have priority over the Liens on the Collateral

by operation of law and (ii) Liens permitted pursuant to clause 14 of the definition of "Permitted Liens" in the Indenture.

4.3 Jurisdiction of Organization; Chief Executive Office. On the date hereof, such Grantor's jurisdiction of organization, identification number from the jurisdiction of organization (if any), and the location of such Grantor's chief executive office or sole place of business or principal residence, as the case may be, are specified on Schedule 3. Such Grantor has furnished to the Collateral Agent a certified charter, certificate of incorporation or other organization document and good standing certificate as of a date which is recent to the date hereof.

4.4 Inventory and Equipment. On the date hereof, the Inventory and the Equipment of the Issuer (other than mobile goods) are kept at the locations listed on Schedule 4.

4.5 Farm Products. None of the Collateral constitutes, or is the Proceeds of, Farm Products.

4.6 Investment Property. (a) The shares of Pledged Shares pledged by such Grantor hereunder constitute all the issued and outstanding shares of all classes of the Capital Stock of each Pledged Share Issuer owned by such Grantor.

(b) All the shares of the Pledged Shares have been duly and validly issued and are fully paid and nonassessable.

(c) Each of the Pledged Notes constitutes the legal, valid and binding obligation of the obligor with respect thereto, enforceable in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing.

(d) Such Grantor is the record and beneficial owner of, and has good and marketable title to, the Investment Property pledged by it hereunder, free of any and all Liens or options in favor of, or claims of, any other Person, except the security interest created by this Agreement.

4.7 Receivables. (a) No amount payable to such Grantor under or in connection with any Receivable is evidenced by any Instrument or Chattel Paper which has not been delivered to the Collateral Agent.

(b) None of the obligors on any Receivables is a Governmental Authority.

4.8 Contracts. To the Issuer's actual knowledge, (a) no consent of any party (other than the Issuer) to any Contract is required, or purports to be required, in connection with the execution, delivery and performance of this Agreement, except as has been obtained.

(b) Each Contract (with respect to the Magnetation Contracts, to the Issuer's actual knowledge) is in full force and effect and constitutes a valid and legally enforceable obligation of the parties thereto, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights

generally, general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing.

(c) No consent or authorization of, filing with or other act by or in respect of any Governmental Authority is required in connection with the execution, delivery, performance, validity or enforceability of any of the Contracts (with respect to the Magnetation Contracts, to the Issuer's actual knowledge) by any party thereto other than those which have been duly obtained, made or performed, are in full force and effect and do not subject the scope of any such Contract to any material adverse limitation, either specific or general in nature.

(d) Neither the Issuer or its Subsidiaries nor any of the other parties to the Contracts (with respect to the Magnetation Contracts, to the Issuer's actual knowledge) is in default in the performance or observance of any of the terms thereof in any manner that, in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(e) The right, title and interest of the Issuer or its Subsidiaries in, to and under the Contracts (with respect to the Magnetation Contracts, to the Issuer's actual knowledge) are not subject to any material defenses, offsets, counterclaims or claims.

(f) The Issuer has delivered to the Collateral Agent a complete and correct copy of each Contract (with respect to the Magnetation Contracts, to the Issuer's actual knowledge), including all amendments, supplements and other modifications thereto.

(g) No amount payable to such Grantor under or in connection with any Contract (with respect to the Magnetation Contracts, to the Issuer's actual knowledge) is evidenced by any Instrument or Chattel Paper which has not been delivered to the Collateral Agent.

(h) None of the parties to any Contract (with respect to the Magnetation Contracts, to the Issuer's actual knowledge) is a Governmental Authority.

4.9 Intellectual Property. To the actual knowledge of the Issuer, (a) Schedule 5 lists all Intellectual Property owned by or licensed to the Issuer in its own name on the date hereof.

(b) On the date hereof, all material Intellectual Property listed on Schedule 5 is valid, subsisting, unexpired and enforceable, has not been abandoned and does not infringe the intellectual property rights of any other Person.

(c) Except as set forth in Schedule 5, on the date hereof, none of the Intellectual Property is the subject of any licensing or franchise agreement pursuant to which such Grantor is the licensor or franchisor.

(d) No material holding, decision or judgment has been rendered by any Governmental Authority which would limit, cancel or question the validity of, or such Grantor's rights in, any Intellectual Property in any respect.

(e) No action or proceeding is pending, or, to the knowledge of such Grantor, threatened, on the date hereof (i) seeking to limit, cancel or question the validity of any Intellectual Property listed on Schedule 5 or such Grantor's ownership interest therein, or

(ii) which, if adversely determined, would have a material adverse effect on the value of any Intellectual Property.

4.10 Commercial Tort Claims. To the actual knowledge of the Issuer:

(a) On the date hereof, the Issuer does not have rights in any Commercial Tort Claim with potential value in excess of $100,000.

(b) Upon the filing of a financing statement covering any Commercial Tort Claim referred to in Section 5.11 hereof against the Issuer in the jurisdiction specified in Schedule 2 hereto, the security interest granted in such Commercial Tort Claim will constitute a valid perfected security interest in favor of the Collateral Agent, for the ratable benefit of the Secured Parties, as collateral security for the Issuer's Obligations, enforceable in accordance with the terms hereof against all creditors of the Issuer and any Persons purporting to purchase such Collateral from the Issuer, which security interest shall be prior to all other Liens on such Collateral except for unrecorded liens permitted by the Indenture which have priority over the Liens on such Collateral by operation of law.

SECTION 5. COVENANTS

Each applicable Grantor (but with respect to Coke, limited to Section 5.3, 5.4, 5.5 and 5.6) covenants and agrees with the Collateral Agent for the ratable benefit of the Secured Parties that, from and after the date of this Agreement until the Obligations shall have been paid in full:

5.1 Delivery of Instruments, Certificated Securities and Chattel Paper. If any amount payable under or in connection with any of the Collateral shall be or become evidenced by any Instrument, Certificated Security or Chattel Paper, such Instrument, Certificated Security or Chattel Paper shall be immediately delivered to the Collateral Agent, duly indorsed as necessary and appropriate, to be held as Collateral pursuant to this Agreement.

5.2 Maintenance of Insurance. (a) The Issuer will maintain, with financially sound and reputable companies, insurance policies (i) insuring the Inventory and Equipment against loss by fire, explosion, theft and such other casualties as is customary and commercially reasonable and (ii) insuring such Grantor and the Collateral Agent for the ratable benefit of the Secured Parties against liability for personal injury and property damage relating to such Inventory and Equipment, such policies to be in such form and amounts and having such coverage as is customary and commercially reasonable.

(b) All such insurance shall (i) provide that no cancellation, material reduction in amount or material change in coverage thereof shall be effective until at least 30 days after receipt by the Collateral Agent of written notice thereof, (ii) name the Collateral Agent as insured party or loss payee and (iii) include a breach of warranty clause.

(c) The Issuer shall deliver to the Collateral Agent a report of a reputable insurance broker with respect to such insurance substantially concurrently with each delivery of the Issuer's audited annual financial statements and such supplemental reports as are necessary and appropriate.

5.3 Payment of Obligations. The Issuer will pay and discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all taxes, assessments and governmental charges or levies imposed upon the Collateral or in respect of income or profits therefrom, as well as all claims of any kind (including, without limitation, claims for labor, materials and supplies) against or with respect to the Collateral, except (i) where the amount or validity thereof is currently being contested in good faith by appropriate proceedings and reserves in conformity with GAAP with respect thereto have been provided on the books of the Issuer or (ii) as set forth in Schedule 6.

5.4 Maintenance of Perfected Security Interest; Further Documentation. (a) Such Grantor shall maintain the security interest created by this Agreement as a perfected security interest having at least the priority described in Section 4.2 and shall defend such security interest against the claims and demands of all Persons whomsoever, subject to the rights of such Grantor under the Notes Documents to dispose of the Collateral.

(b) Such Grantor will furnish to the Collateral Agent from time to time statements and schedules further identifying and describing the assets and property of such Grantor and such other reports in connection therewith as the Collateral Agent may reasonably request, all in reasonable detail.

(c) At any time and from time to time, and at the sole expense of such Grantor, such Grantor will promptly and duly execute and deliver, and record or authorize the Collateral Agent to record, such further instruments and documents and take such further actions for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted, including, without limitation, (i) filing any financing or continuation statements under the Uniform Commercial Code (or other similar laws) in effect in any jurisdiction with respect to the security interests created hereby and (ii) in the case of Investment Property, Deposit Accounts, Letter-of-Credit Rights and any other relevant Collateral, taking any actions necessary to enable the Collateral Agent to obtain "control" (within the meaning of the applicable Uniform Commercial Code) with respect thereto.

5.5 Changes in Name, etc. Such Grantor will not, except upon 15 days' prior written notice to the Collateral Agent and delivery to the Collateral Agent of filed copies of all additional executed financing statements and other documents necessary to maintain the validity, perfection and priority of the security interests provided for herein, (i) change its jurisdiction of organization or the location of its chief executive office or sole place of business or principal residence from that referred to in Section 4.3 or (ii) change its name.

5.6 Notices. Such Grantor will advise the Collateral Agent in writing promptly, in reasonable detail, of:

(a) any Lien (other than security interests created hereby or Liens permitted under the Indenture) on any of the Collateral which would adversely affect the ability of the Collateral Agent to exercise any of its remedies hereunder; and

(b) of the occurrence of any other event which could reasonably be expected to have a material adverse effect on the aggregate value of the Collateral or on the security interests created hereby.

5.7 Investment Property. (a) If such Grantor shall become entitled to receive or shall receive any certificate (including, without limitation, any certificate representing a dividend or a distribution in connection with any reclassification, increase or reduction of capital or any certificate issued in connection with any reorganization), option or rights in respect of the Capital Stock of any Pledged Share Issuer, whether in addition to, in substitution of, as a conversion of, or in exchange for, any shares of the Pledged Shares, or otherwise in respect thereof, such Grantor shall accept the same as the agent of the Secured Parties, hold the same in trust for the Secured Parties and promptly deliver the same forthwith to the Collateral Agent in the exact form received, duly indorsed by such Grantor to the Collateral Agent, if required, together with an undated stock power covering such certificate duly executed in blank by such Grantor and with signature guaranteed, to be held by the Collateral Agent, subject to the terms hereof, as additional collateral security for the Obligations. Any sums paid upon or in respect of the Investment Property upon the liquidation or dissolution of any Issuer shall be promptly paid over to the Collateral Agent to be held by it hereunder as additional collateral security for the Obligations, and in case any distribution of capital shall be made on or in respect of the Investment Property or any property shall be distributed upon or with respect to the Investment Property pursuant to the recapitalization or reclassification of the capital of any Issuer or pursuant to the reorganization thereof, the property so distributed shall, unless otherwise subject to a perfected security interest in favor of the Collateral Agent, be promptly delivered to the Collateral Agent to be held by it hereunder as additional collateral security for the Obligations. If any sums of money or property so paid or distributed in respect of the Investment Property shall be received by such Grantor, such Grantor shall, until such money or property is paid or delivered to the Collateral Agent, hold such money or property in trust for the Secured Parties, segregated from other funds of such Grantor, as additional collateral security for the Obligations.

(b) Without the prior written consent of the Collateral Agent, such Grantor will not (i) vote to enable, or take any other action to permit, any Pledged Share Issuer to issue any Capital Stock of any nature or to issue any other securities convertible into or granting the right to purchase or exchange for any Capital Stock of any nature of any Pledged Share Issuer, (ii) sell, assign, transfer, exchange, or otherwise dispose of, or grant any option with respect to, the Investment Property or Proceeds thereof (except pursuant to a transaction expressly permitted by the Indenture), (iii) create, incur or permit to exist any Lien or option in favor of, or any claim of any Person with respect to, any of the Investment Property or Proceeds thereof, or any interest therein, except for (x) the security interests created by this Agreement and (y) Liens securing the Borrower Obligations (as such term is defined in the Guarantee Agreement) and the Guarantor Obligations (as such term is defined in the Guarantee Agreement), in each case, permitted by the Indenture or (iv) enter into any agreement or undertaking restricting the right or ability of such Grantor or the Collateral Agent to sell, assign or transfer any of the Investment Property or Proceeds thereof.

(c) In the case of each Grantor which is a Pledged Share Issuer, such Pledged Share Issuer agrees that (i) it will be bound by the terms of this Agreement relating to the Investment Property issued by it and will comply with such terms insofar as such terms are applicable to it,

(ii) it will notify the Collateral Agent promptly in writing of the occurrence of any of the events described in Section 5.7(a) with respect to the Investment Property issued by it and (iii) the terms of Sections 6.3(c) and 6.7 shall apply to it, mutatis mutandis, with respect to all actions that may be required of it pursuant to Section 6.3(c) or 6.7 with respect to the Investment Property issued by it.

5.8 Contracts. (a) The Issuer will perform and comply in all material respects with all its obligations under the Contracts.

(b) The Issuer will not amend, modify, terminate or waive any provision of any Contract in any manner which could reasonably be expected to materially adversely affect the value of such Contract as Collateral.

(c) The Issuer will exercise promptly and diligently each and every material right which it may have under each Contract (other than any right of termination).

(d) The Issuer will promptly deliver to the Collateral Agent a copy of each material demand, notice or document received by it relating in any way to any Contract that questions the validity or enforceability of such Contract.

5.9 Intellectual Property. (a) The Issuer (either itself or through licensees) will (i) continue to use each material Trademark on each and every trademark class of goods applicable to its current line as reflected in its current catalogs, brochures and price lists in order to maintain such Trademark in full force free from any claim of abandonment for non-use, (ii) maintain as in the past the quality of products and services offered under such Trademark, (iii) use such Trademark with the appropriate notice of registration and all other notices and legends required by applicable Requirements of Law, (iv) not adopt or use any mark which is confusingly similar or a colorable imitation of such Trademark unless the Collateral Agent, for the ratable benefit of the Secured Parties, shall obtain a perfected security interest in such mark pursuant to this Agreement, and (v) not (and not permit any licensee or sublicensee thereof to) do any act or knowingly omit to do any act whereby such Trademark may become invalidated or impaired in any way if the consequence thereof would materially adversely affect the value of the Trademarks considered as a whole.

(b) The Issuer (either itself or through licensees) will not do any act, or omit to do any act, whereby any material Patent may become forfeited, abandoned or dedicated to the public.

(c) The Issuer (either itself or through licensees) (i) will employ each material Copyright and (ii) will not (and will not permit any licensee or sublicensee thereof to) do any act or knowingly omit to do any act whereby any material portion of the Copyrights may become invalidated or otherwise impaired. The Issuer will not (either itself or through licensees) do any act whereby any material portion of the Copyrights may fall into the public domain if the consequence thereof would materially adversely affect the value of the Copyrights considered as a whole.

(d) The Issuer (either itself or through licensees) will not do any act that knowingly uses any material Intellectual Property to infringe the intellectual property rights of any other Person.

(e) The Issuer will notify the Collateral Agent in writing immediately if it knows, or has reason to know, that any application or registration relating to any material Intellectual Property may become forfeited, abandoned or dedicated to the public, or of any adverse determination or development (including, without limitation, the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office, the United States Copyright Office or any court or tribunal in any country) regarding such Grantor's ownership of, or the validity of, any material Intellectual Property or such Grantor's right to register the same or to own and maintain the same.

(f) Whenever the Issuer, either by itself or through any agent, employee, licensee or designee, shall file an application for the registration of any Intellectual Property with the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency in any other country or any political subdivision thereof, such Grantor shall report such filing to the Collateral Agent in writing within five Business Days after the last day of the fiscal quarter in which such filing occurs. The Issuer shall execute and deliver, and have recorded, any and all agreements, instruments, documents, and papers as necessary to evidence the Secured Parties' security interest in any Copyright, Patent or Trademark and the goodwill and general intangibles of the Issuer relating thereto or represented thereby.

(g) The Issuer will take all reasonable and necessary steps, including, without limitation, in any proceeding before the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency in any other country or any political subdivision thereof, to maintain and pursue each application (and to obtain the relevant registration) and to maintain each registration of the material Intellectual Property, including, without limitation, filing of applications for renewal, affidavits of use and affidavits of incontestability.

(h) In the event that any material Intellectual Property is infringed, misappropriated or diluted by a third party, the Issuer shall (i) take such actions as the Issuer shall reasonably deem appropriate under the circumstances to protect such Intellectual Property and (ii) if such Intellectual Property is of material economic value, promptly notify the Collateral Agent in writing after it learns thereof and sue for infringement, misappropriation or dilution, to seek injunctive relief where appropriate and to recover any and all damages for such infringement, misappropriation or dilution.

5.10 Commercial Tort Claims. If the Issuer shall obtain an interest in any Commercial Tort Claim, the Issuer shall within 30 days of obtaining such interest sign and deliver documentation granting a security interest under the terms and provisions of this Agreement in and to such Commercial Tort Claim.

SECTION 6. REMEDIAL PROVISIONS

6.1 Certain Matters Relating to Receivables. (a) At any time and from time to time during the continuance of an Event of Default, upon the Collateral Agent's request and at the expense of the Issuer, the Issuer shall cause independent public accountants or others satisfactory to the Collateral Agent to furnish to the Collateral Agent reports showing reconciliations, aging and test verifications of, and trial balances for, the Receivables.

(b) At all times, including, subject to the following sentence, during the continuance of an Event of Default, the Issuer shall collect its Receivables. If required by the Collateral Agent at any time after the occurrence and during the continuance of an Event of Default, any payments of Receivables, when collected by the Issuer, (i) shall be forthwith (and, in any event, within two Business Days) deposited by such Grantor in the exact form received, duly indorsed by the Issuer to the Collateral Agent if required, in a Collateral Account maintained under the sole dominion and control of the Collateral Agent, subject to withdrawal by the Collateral Agent for the account of the Secured Parties only as provided in Section 6.5, and (ii) until so turned over, shall be held by the Issuer in trust for the Secured Parties, segregated from other funds of the Issuer. Each such deposit of Proceeds of Receivables shall be accompanied by a report identifying in reasonable detail the nature and source of the payments included in the deposit.

(c) At the Collateral Agent's request, the Issuer shall deliver to the Collateral Agent all original and other documents evidencing, and relating to, the agreements and transactions which gave rise to the Receivables, including, without limitation, all original orders, invoices and shipping receipts.

6.2 Communications with Obligors; Issuer Remains Liable. (a) At any time after the occurrence and during the continuance of an Event of Default, the Collateral Agent in its own name or in the name of others may communicate with obligors under the Receivables and parties to the Contracts to verify with them to the Collateral Agent's satisfaction the existence, amount and terms of any Receivables or Contracts.

(b) Upon the request of the Collateral Agent at any time after the occurrence and during the continuance of an Event of Default, the Issuer shall notify obligors on the Receivables and parties to the Contracts that the Receivables and the Contracts have been assigned to the Collateral Agent for the ratable benefit of the Secured Parties and that payments in respect thereof shall be made directly to the Collateral Agent.

(c) Anything herein to the contrary notwithstanding, the Issuer shall remain liable under each of the Receivables and Contracts to observe and perform all the conditions and obligations to be observed and performed by it thereunder, all in accordance with the terms of any agreement giving rise thereto. Neither the Collateral Agent nor any other Secured Party shall have any obligation or liability under any Receivable (or any agreement giving rise thereto) or Contract by reason of or arising out of this Agreement or the receipt by the Collateral Agent or any other Secured Party of any payment relating thereto, nor shall the Collateral Agent or any other Secured Party be obligated in any manner to perform any of the obligations of any Grantor under or pursuant to any Receivable (or any agreement giving rise thereto) or Contract, to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party thereunder, to present or file any

claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

6.3 Pledged Shares. (a) Unless an Event of Default shall have occurred and be continuing and the Collateral Agent shall have given notice to the relevant Grantor of the Collateral Agent's intent to exercise its corresponding rights pursuant to Section 6.3(b), each Grantor shall be permitted to receive all cash dividends paid in respect of the Pledged Shares and all payments made in respect of the Pledged Notes, in each case paid in the normal course of business of the relevant Issuer and consistent with past practice, to the extent permitted in the Indenture, and to exercise all voting and corporate or other organizational rights with respect to the Investment Property; provided, however, that no vote shall be cast or corporate or other organizational right exercised or other action taken which, in the Collateral Agent's reasonable judgment, would impair the Collateral or which would be inconsistent with or result in any violation of any provision of the Indenture, this Agreement or any other Notes Document.

(b) If an Event of Default shall occur and be continuing and the Collateral Agent shall give notice of its intent to exercise such rights to the relevant Grantor or Grantors, (i) the Collateral Agent shall have the right to receive any and all cash dividends, payments or other Proceeds paid in respect of the Investment Property and make application thereof to the Obligations in such order as the Collateral Agent may determine, and (ii) any or all of the Investment Property shall be registered in the name of the Collateral Agent or its nominee, and the Collateral Agent or its nominee may thereafter exercise (x) all voting, corporate and other rights pertaining to such Investment Property at any meeting of shareholders of the relevant Pledged Share Issuer or Pledged Share Issuers or otherwise and (y) any and all rights of conversion, exchange and subscription and any other rights, privileges or options pertaining to such Investment Property as if it were the absolute owner thereof (including, without limitation, the right to exchange at its discretion any and all of the Investment Property upon the merger, consolidation, reorganization, recapitalization or other fundamental change in the corporate or other organizational structure of any Issuer, or upon the exercise by any Grantor or the Collateral Agent of any right, privilege or option pertaining to such Investment Property, and in connection therewith, the right to deposit and deliver any and all of the Investment Property with any committee, depositary, transfer agent, registrar or other designated agency upon such terms and conditions as the Collateral Agent may determine), all without liability except to account for property actually received by it, but the Collateral Agent shall have no duty to any Grantor or the Trustee or (unless it has received written instruction from the Trustee or other Secured Party) any Secured Party to exercise any such right, privilege or option and shall not be responsible for any failure to do so or delay in so doing.

(c) Each Grantor hereby authorizes and instructs each Issuer of any Investment Property pledged by such Grantor hereunder to (i) comply with any instruction received by it from the Collateral Agent in writing that (x) states that an Event of Default has occurred and is continuing and (y) is otherwise in accordance with the terms of this Agreement, without any other or further instructions from such Grantor, and each Grantor agrees that each Issuer shall be fully protected in so complying, and (ii) unless otherwise expressly permitted hereby, pay any dividends or other payments with respect to the Investment Property directly to the Collateral Agent.

6.4 Proceeds to be Turned Over To Collateral Agent. In addition to the rights of the Secured Parties specified in Section 6.1 with respect to payments of Receivables, if an Event of Default shall occur and be continuing, all Proceeds received by any Grantor consisting of cash, checks and other near-cash items shall be held by such Grantor in trust for the Secured Parties, segregated from other funds of such Grantor, and shall, forthwith upon receipt by such Grantor, be promptly turned over to the Collateral Agent in the exact form received by such Grantor (duly indorsed by such Grantor to the Collateral Agent, if required). All Proceeds received by the Collateral Agent hereunder shall be held by the Collateral Agent in a Collateral Account maintained under its sole dominion and control. All Proceeds while held by the Collateral Agent in a Collateral Account (or by such Grantor in trust for the Secured Parties) shall continue to be held as collateral security for all the Obligations and shall not constitute payment thereof until applied as provided in Section 6.5.

6.5 Application of Proceeds. At such intervals as may be agreed upon by the Issuer and the Trustee, or, if an Event of Default shall have occurred and be continuing, at any time at the Trustee's election, the Collateral Agent shall, at the written direction of the Trustee, deliver to the Trustee all or any part of Proceeds constituting Collateral, whether or not held in any Collateral Account, and any proceeds of the guarantee set forth in Section 2, for application by the Trustee pursuant to Section 6.13 of the Indenture.

6.6 Code and Other Remedies. If an Event of Default shall occur and be continuing, the Collateral Agent, on behalf of the Secured Parties, shall, at the written direction of the Trustee, in accordance with Article 6 of the Indenture, exercise, in addition to all other rights and remedies granted to it in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Obligations, all rights and remedies of a secured party under the New York UCC or any other applicable law. Without limiting the generality of the foregoing, the Collateral Agent, without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law referred to below) to or upon any Grantor or any other Person (all and each of which demands, defenses, advertisements and notices are hereby waived), shall in such circumstances forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and/or shall forthwith sell, lease, assign, give option or options to purchase, or otherwise dispose of and deliver the Collateral or any part thereof (or contract to do any of the foregoing), in one or more parcels at public or private sale or sales, at any exchange, broker's board or office of the Collateral Agent or any other Secured Party or elsewhere upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. The Trustee shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in any Grantor, which right or equity is hereby waived and released. Each Grantor further agrees, at the Collateral Agent's request, to assemble the Collateral and make it available to the Collateral Agent at places which the Collateral Agent shall reasonably select, whether at such Grantor's premises or elsewhere. The Collateral Agent shall deliver the net proceeds of any action taken by it pursuant to this Section 6.6, after deducting all reasonable costs and expenses of every kind incurred in connection therewith or incidental to the care or safekeeping of any of the Collateral or in any way relating to the Collateral or the rights of the Secured Parties hereunder, including, without limitation, reasonable attorneys' fees and disbursements, to the Trustee for application pursuant

to Section 6.13 of the Indenture. To the extent permitted by applicable law, each Grantor waives all claims, damages and demands it may acquire against the Trustee, the Collateral Agent or any other Secured Party arising out of the exercise by them of any rights hereunder. If any notice of a proposed sale or other disposition of Collateral shall be required by law, such notice shall be deemed reasonable and proper if given at least 10 days before such sale or other disposition.

6.7 Subordination. Each Grantor hereby agrees that, upon the occurrence and during the continuance of an Event of Default, unless otherwise agreed by the Collateral Agent, all Indebtedness owing by it to any Subsidiary of the Issuer shall be fully subordinated to the indefeasible payment in full in cash of such Grantor's Obligations.

6.8 Deficiency. The Issuer shall remain liable for any deficiency if the proceeds of any sale or other disposition of the Collateral are insufficient to pay its Obligations and the fees and disbursements of any attorneys employed by the Trustee or the Collateral Agent to collect such deficiency.

6.9 Collateral Enforcement Standstill. The rights of the Collateral Agent to take enforcement actions against the Collateral may only be exercised in accordance with, and shall be otherwise subject to Article 6 of the Indenture.

SECTION 7. THE COLLATERAL AGENT

7.1 Collateral Agent's Appointment as Attorney-in-Fact, etc. (a) Each Grantor hereby irrevocably constitutes and appoints the Collateral Agent and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Grantor and in the name of such Grantor or in its own name, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement, and, without limiting the generality of the foregoing, each Grantor hereby gives the Collateral Agent the power and right, on behalf of such Grantor, without notice to or assent by such Grantor, to do any or all of the following:

(i) in the name of such Grantor or its own name, or otherwise, take possession of and indorse and collect any checks, drafts, notes, acceptances or other instruments for the payment of moneys due under any Receivable or Contract or with respect to any other Collateral and file any claim or take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by the Collateral Agent for the purpose of collecting any and all such moneys due under any Receivable or Contract or with respect to any other Collateral whenever payable;

(ii) in the case of any Intellectual Property, execute and deliver, and have recorded, any and all agreements, instruments, documents and papers as the Collateral Agent may request to evidence the Collateral Agent's and the other Secured Parties' security interest in such Intellectual Property and the goodwill and general intangibles of such Grantor relating thereto or represented thereby;

(iii) pay or discharge taxes and Liens levied or placed on or threatened against the Collateral, effect any repairs or any insurance called for by the terms of this Agreement and pay all or any part of the premiums therefor and the costs thereof;

(iv) execute, in connection with any sale provided for in Section 6.6 or 6.7, any indorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral; and

(v) (1) direct any party liable for any payment under any of the Collateral to make payment of any and all moneys due or to become due thereunder directly to the Collateral Agent or as the Collateral Agent shall direct; (2) ask or demand for, collect, and receive payment of and receipt for, any and all moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Collateral; (3) sign and indorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications, notices and other documents in connection with any of the Collateral; (4) commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any portion thereof and to enforce any other right in respect of any Collateral; (5) defend any suit, action or proceeding brought against such Grantor with respect to any Collateral; (6) settle, compromise or adjust any such suit, action or proceeding and, in connection therewith, give such discharges or releases as the Collateral Agent may deem appropriate; (7) assign any Copyright, Patent or Trademark (along with the goodwill of the business to which any such Copyright, Patent or Trademark pertains), throughout the world for such term or terms, on such conditions, and in such manner, as the Collateral Agent shall in its sole discretion determine; and (8) generally, sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Collateral Agent were the absolute owner thereof for all purposes, and do, at the Collateral Agent's option and such Grantor's expense, at any time, or from time to time, all acts and things which the Collateral Agent deems necessary to protect, preserve or realize upon the Collateral and the Collateral Agent's and the other Secured Parties' security interests therein and to effect the intent of this Agreement, all as fully and effectively as such Grantor might do.

Anything in this Section 7.1(a) to the contrary notwithstanding, the Collateral Agent agrees that it will not exercise any rights under the power of attorney provided for in this Section 7.1(a) (other than pursuant to clause (ii) thereof) unless an Event of Default shall have occurred and be continuing and it has received written instruction from the Trustee.

(b) If any Grantor fails to perform or comply with any of its agreements contained herein, the Collateral Agent, at its option, but without any obligation so to do, may perform or comply, or otherwise cause performance or compliance, with such agreement.

(c) Each Grantor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. All powers, authorizations and agencies contained in this Agreement are coupled with an interest and are irrevocable until this Agreement is terminated and the security interests created hereby are released.

7.2 Duty of Collateral Agent. The Collateral Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under Section 9-207 of the New York UCC or otherwise, shall be to deal with it in the same manner as the Collateral Agent deals with similar property for its own account. Neither the Collateral Agent, any other Secured Party nor any of their respective officers, directors, employees or agents shall be liable for failure to demand, collect or realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Grantor or any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof. The powers, rights and remedies conferred on the Collateral Agent hereunder are solely to protect the Collateral Agent's and the other Secured Parties' interests in the Collateral and shall not impose any duty upon the Collateral Agent or any other Secured Party to exercise any such powers, rights and remedies. Neither the Collateral Agent nor any of its officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except for its own gross negligence or willful misconduct.

7.3 Filing of Financing Statements. The Grantors shall, and each Grantor hereby authorizes the Collateral Agent, when requested by the Trustee and at the sole expense of such Grantor, to, file or record financing statements and other filing or recording documents or instruments with respect to the Collateral without the signature of such Grantor in such form and in such offices as shall be required by applicable law or as the Collateral Agent determines appropriate to perfect the security interests of the Collateral Agent under this Agreement. The Issuer authorizes the Collateral Agent to use the collateral description "all personal property" in any financing statements with respect to the Issuer. Each Grantor hereby ratifies and authorizes the filing by the Collateral Agent of any financing statement with respect to the Collateral made prior to the date hereof. Notwithstanding anything in this Agreement to the contrary:

(a) [reserved];

(b) each of the Issuer and COKE shall be required, and the Collateral Agent may, but shall not be obligated, to make financing statement filings at the county or other local level with respect to As-Extracted Collateral as soon as reasonably practicable, and in any event, (i) in the case of As-Extracted Collateral located on real property in which any of the Issuer or COKE Grantor owns a fee interest as of the date hereof, within 30 days of the date hereof and (ii) in the case of As-Extracted Collateral located on real property in which any of the Issuer or COKE acquires a fee interest after the date hereof, within 30 days after the date of the acquisition of such real property;

(c) no Grantor shall be obligated to permit any financing statement filings at any county, real estate or other local filing office solely with respect to Fixtures or As-Extracted Collateral located on Leased Real Property until 30 days after the date hereof (or, with respect to future Leased Real Property, until 30 days after the date that a Grantor acquires rights to such Leased Real Property), or in any event if such a filing would be prohibited by, or constitute a breach or default under or result in the termination of or require any consent not obtained under, any contract, license, agreement, instrument or other document evidencing or giving rise to the Leased Real Property;

(d) notwithstanding anything in this section to the contrary, the parties hereto agree that all UCC filings, including continuation statements, shall be filed by the Collateral Agent on behalf of the Secured Parties, in each case, at the sole expense of each applicable Grantor.

7.4 Authority of Collateral Agent. Each Grantor acknowledges that the rights and responsibilities of the Collateral Agent under this Agreement with respect to any action taken by the Collateral Agent or the exercise or non-exercise by the Collateral Agent of any option, voting right, request, judgment or other right or remedy provided for herein or resulting or arising out of this Agreement shall, as between the Secured Parties, be governed by the Indenture and by such other agreements with respect thereto as may exist from time to time among them, but, as between the Collateral Agent and the Grantors, the Collateral Agent shall be conclusively presumed to be acting as agent for the Secured Parties with full and valid authority so to act or refrain from acting, and no Grantor shall be under any obligation, or entitlement, to make any inquiry respecting such authority.

SECTION 8. MISCELLANEOUS

8.1 Amendments in Writing. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except in accordance with Article 9 of the Indenture.

8.2 Notices. All notices, requests and demands to or upon the Collateral Agent or any Grantor hereunder shall be effected in the manner provided for in Section 13.01 of the Indenture; *provided* that any such notice, request or demand to or upon any Guarantor shall be addressed to such Guarantor at its notice address set forth on Schedule 7.

8.3 No Waiver by Course of Conduct; Cumulative Remedies. Neither the Collateral Agent nor any other Secured Party shall by any act (except by a written instrument pursuant to Section 8.1), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or Event of Default. No failure to exercise, nor any delay in exercising, on the part of the Trustee, the Collateral Agent or any other Secured Party, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

A waiver by the Collateral Agent or any other Secured Party of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which the Collateral Agent or such Secured Party would otherwise have on any future occasion. The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any other rights or remedies provided by law.

8.4 Enforcement Expenses; Indemnification. (a) The Collateral Agent shall be entitled to reimbursement of its reasonable out-of-pocket expenses incurred hereunder and indemnity for its actions in connection herewith as provided in Section 7.07 of the Indenture (or any equivalent provision of any other Notes Document).

(b) The agreements in this Section 8.4 shall survive repayment of the Obligations and all other amounts payable under the Indenture and the other Notes Documents.

8.5 Successors and Assigns. This Agreement shall be binding upon the successors and assigns of each Grantor and shall inure to the benefit of the Collateral Agent and the other Secured Parties and their successors and assigns; provided that no Grantor may assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the Trustee.

8.6 Counterparts. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by email or telecopy), and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

8.7 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

8.8 Section Headings. The Section headings used in this Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

8.9 Integration. This Agreement and the other Notes Documents represent the agreement of the Grantors and the Secured Parties with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by the Collateral Agent or any other Secured Party relative to subject matter hereof and thereof not expressly set forth or referred to herein or in the other Notes Documents.

8.10 **GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK**.

8.11 Submission To Jurisdiction; Waivers. Each Grantor hereby irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to this Agreement, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of any state or federal court sitting in the Borough of Manhattan in the City of New York, and appellate courts from any thereof;

(b) consents that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such Grantor at its address referred to in Section 8.2 or at such other address of which the Collateral Agent shall have been notified pursuant thereto;

(d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction; and

(e) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section any special, exemplary, punitive or consequential damages.

8.12 Acknowledgements. Each Grantor hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Notes Documents to which it is a party;

(b) none of the Trustee, the Collateral Agent or any other Secured Party has any fiduciary relationship with or duty to any Grantor arising out of or in connection with this Agreement or any of the other Notes Documents, and the relationship between the Grantors, on the one hand, and the Trustee, the Collateral Agent and the other Secured Parties, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the other Notes Documents or otherwise exists by virtue of the transactions contemplated hereby among the Secured Parties or among the Grantors and the Secured Parties.

8.13 Additional Grantors. Pursuant to Section 4.11 of the Indenture, certain additional Subsidiaries of the Grantors may enter in this Agreement as Grantors. Upon execution and delivery by the Collateral Agent and a Subsidiary of a Security Agreement Supplement in the form set forth on Annex I hereto, such Subsidiary shall become a Grantor hereunder with the same force and effect as if originally named as a Grantor herein. The execution and delivery of any such instrument shall not require the consent of any other Grantor hereunder. The rights and obligations of each Grantor hereunder shall remain in full force and effect notwithstanding the addition of any new Grantor as a party to this Agreement.

8.14 Termination or Release. (a) This Agreement and the security interests granted hereby shall terminate with respect to all Obligations and any Liens arising therefrom shall be automatically released when the principal of and interest under the Notes and all fees and other Obligations (other than contingent obligations not yet accrued and payable) shall have been paid in full.

(b) The Liens securing the Obligations in respect of the Notes will be released, in whole or in part, at such time as provided in Section 10.06 of the Indenture or upon the effectiveness of any written consent to the release of the security interest granted hereby in any Collateral pursuant to Sections 9.02 and 10.06 of the Indenture.

(c) In connection with any termination or release pursuant to paragraph (a) or (b) of this Section 8.14, the Collateral Agent shall, upon receipt of an Officer's Certificate and an Opinion of Counsel that complies with Sections 13.02 and 13.03 of the Indenture, execute and deliver to any Grantor, at such Grantor's expense, all documents that such Grantor shall reasonably request to evidence such termination or release and shall perform such other actions, at such Grantor's expense, reasonably requested by such Grantor to effect such release, including

delivery of certificates, securities and instruments. Any execution and delivery of documents pursuant to this Section 8.14 shall be without recourse to or warranty by the Collateral Agent.

8.15 **WAIVER OF JURY TRIAL. EACH GRANTOR HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER NOTE DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.**

IN WITNESS WHEREOF, each of the undersigned has caused this Security Agreement to be duly executed and delivered as of the date first above written.

ERP IRON ORE, LLC

By: _____
Name:
Title:

ERP COMPLIANT COKE, LLC

By: _____
Name:
Title:

WILMINGTON SAVINGS FUND SOCIETY, FSB,
as Collateral Agent

By: _____
Name:
Title:

Schedule 1

DESCRIPTION OF INVESTMENT PROPERTY

Pledged Shares:

None

Pledged Notes:

Schedule 2

FILINGS AND OTHER ACTIONS
REQUIRED TO PERFECT SECURITY INTERESTS

Uniform Commercial Code Filings

Patent and Trademark Filings

Copyright Filings

Actions with respect to Pledged Shares

Other Actions

Schedule 3

LOCATION OF JURISDICTION OF ORGANIZATION AND CHIEF EXECUTIVE OFFICE

Grantor	Jurisdiction of Organization / Identification Number	Location of Chief Executive Office

Schedule 4

LOCATIONS OF INVENTORY AND EQUIPMENT

Grantor	Locations

Schedule 5

COPYRIGHTS AND COPYRIGHT LICENSES

PATENTS AND PATENT LICENSES

TRADEMARKS AND TRADEMARK LICENSES

Schedule 6

EXCLUDED PAYMENT OBLIGATIONS

Schedule 7

NOTICE ADDRESSES OF GRANTORS

ACKNOWLEDGEMENT AND CONSENT

The undersigned hereby acknowledges receipt of a copy of the Security Agreement dated as of [__], 2016 (the "Agreement"), made by the Grantors parties thereto for the benefit of [__], as Collateral Agent. The undersigned agrees for the benefit of the Collateral Agent and the other Secured Parties as follows:

1. The undersigned will be bound by the terms of the Agreement and will comply with such terms insofar as such terms are applicable to the undersigned.

2. The undersigned will notify the Collateral Agent promptly in writing of the occurrence of any of the events described in Section 5.7(a) of the Agreement.

3. The terms of Sections 6.3(c) and 6.7 of the Agreement shall apply to it, mutatis mutandis, with respect to all actions that may be required of it pursuant to Section 6.3(c) or 6.7 of the Agreement.

[NAME OF PLEDGED SHARE ISSUER]

By: _____
Name:
Title:

Address for Notices:

_____

_____

_____

Fax:

Annex I to the
Security Agreement

SUPPLEMENT NO. ____ dated as of [●] (the "**Supplement**"), to the Security Agreement (the "**Security Agreement**"), dated as of [__], 2016, among the Grantors identified therein and Wilmington Savings Fund Society, FSB, as Collateral Agent.

A. Reference is made to that certain the Indenture dated as of [__], 2016 (as amended, supplemented or otherwise modified from time to time, the "**Indenture**"), among ERP Iron Ore, LLC, a Virginia limited liability company (the "**Issuer**"), the Guarantors party thereto from time to time and Wilmington Savings Fund Society, FSB, as Trustee and Collateral Agent.

B. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Indenture and the Security Agreement.

C. The Grantors have entered into the Security Agreement in order to secure the obligations under the Indenture and the other Obligations. Section 8.13 of the Security Agreement provides that additional Subsidiaries of the Issuer may become Grantors under the Security Agreement by execution and delivery of an instrument in the form of this Supplement. The undersigned (the "**New Grantor**") is executing this Supplement in accordance with the requirements of the Indenture to become a Grantor under the Security Agreement.

Accordingly, the Collateral Agent and the New Grantor agree as follows:

SECTION 1. In accordance with Section 8.13 of the Security Agreement, the New Grantor by its signature below becomes a Grantor under the Security Agreement with the same force and effect as if originally named therein as a Grantor and the New Grantor hereby (a) agrees to all the terms and provisions of the Security Agreement applicable to it as a Grantor thereunder and (b) represents and warrants that the representations and warranties made by it as a Grantor thereunder are true and correct on and as of the date hereof; *provided* that, to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct in all respects as of such earlier date. In furtherance of the foregoing, the New Grantor, as security for the payment and performance in full of the Obligations, does hereby create and grant to the Collateral Agent, its successors and assigns, for the benefit of the Secured Parties, their successors and assigns, a security interest in and lien on all of the New Grantor's right, title and interest in and to the Collateral (as defined in the Security Agreement) of the New Grantor. Each reference to a "Grantor" in the Security Agreement shall be deemed to include the New Grantor. The Security Agreement is hereby incorporated herein by reference.

SECTION 2. The New Grantor represents and warrants to the Collateral Agent and the other Secured Parties that this Supplement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy laws and by general principles of equity.

SECTION 3. This Supplement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of

which when taken together shall constitute a single contract. This Supplement shall become effective when the Collateral Agent shall have received a counterpart of this Supplement that bears the signature of the New Grantor and the Collateral Agent has executed a counterpart hereof. Delivery of an executed signature page to this Supplement by facsimile transmission or other electronic communication shall be as effective as delivery of a manually signed counterpart of this Supplement.

SECTION 4. The New Grantor hereby represents and warrants that (a) set forth on Schedule I attached hereto is a true and correct schedule of the information required by Schedules 1 through 5 to the Security Agreement applicable to it and (b) set forth under its signature hereto is the true and correct legal name of the New Grantor, its jurisdiction of formation and the location of its chief executive office.

SECTION 5. Except as expressly supplemented hereby, the Security Agreement shall remain in full force and effect.

SECTION 6. THIS SUPPLEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

SECTION 7. If any provision of this Supplement is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions of this Supplement shall not be affected or impaired thereby. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 8. All communications and notices hereunder shall be in writing and given as provided in Section 13.01 of the Indenture.

SECTION 9. The New Grantor agrees to reimburse the Collateral Agent for its reasonable out-of-pocket expenses in connection with the execution and delivery of this Supplement, including the reasonable fees, other charges and disbursements of counsel for the Collateral Agent.

[Signature pages follow.]

IN WITNESS WHEREOF, the New Grantor and the Collateral Agent have duly executed this Supplement to the Security Agreement as of the day and year first above written.

[NAME OF NEW GRANTOR]

By: _____
Name:
Title:

Legal Name:
Jurisdiction of Formation:
Location of Chief Executive office:

[__],
as Collateral Agent

By: _____
Name:
Title:

Annex 1-A to
Supplement

Supplement to Schedule 1

Supplement to Schedule 2

Supplement to Schedule 3

Supplement to Schedule 4

Supplement to Schedule 5

Supplement to Schedule 6

Supplement to Schedule 7

EXHIBIT I

Form of Tom Clarke Guaranty

Execution Version

THIS GUARANTEE AGREEMENT IS SUBJECT TO THE PROVISIONS OF THE INDENTURE DATED AS OF DECEMBER [•], 2016 (AS AMENDED, RESTATED, SUPPLEMENTED OR OTHERWISE MODIFIED FROM TIME TO TIME), AMONG ERP IRON ORE, LLC, AS ISSUER, THE GUARANTORS PARTY THERETO, AND WILMINGTON SAVINGS FUND SOCIETY, FSB, AS TRUSTEE, COLLATERAL AGENT, PAYING AGENT, REGISTRAR AND CALCULATION AGENT.

GUARANTEE AGREEMENT

made by

THOMAS MATTHEW CLARKE,

ANA MERCEDES CLARKE,

ERP IRON ORE, LLC

and

ERP COMPLIANT COKE, LLC

in favor of

WILMINGTON SAVINGS FUND SOCIETY, FSB

as Trustee under the Indenture governing the Floating Rate Senior Secured Amortizing PIK Toggle Notes due 2019 issued by ERP Iron Ore, LLC

and

each Holder of Notes

Dated as of December [•], 2016

TABLE OF CONTENTS

GUARANTEE AGREEMENT

GUARANTEE AGREEMENT, dated as of December [•], 2016, made by each of the signatories hereto (together with any other entity that may become a party hereto as provided herein, the "Guarantors"), in favor of Wilmington Savings Fund Society, FSB, as trustee (in such capacity, the "Trustee") on behalf of the holders (the "Holders") of the Notes (as defined below) issued pursuant to the indenture, dated as of December [•], 2016 (as amended, supplemented or otherwise modified from time to time, the "Indenture"), among ERP Iron Ore, LLC, a Virginia limited liability company (the "Issuer"), the guarantors listed on the signature pages thereto and Wilmington Savings Fund Society, FSB, as Trustee, as collateral agent (in such capacity, the "Collateral Agent"), paying agent (in such capacity, the "Paying Agent"), registrar (in such capacity, the "Registrar") and calculation agent (in such capacity, the "Calculation Agent").

W I T N E S S E T H:

WHEREAS, on May 5, 2015, Magnetation LLC (the "Debtor Company") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq., in the United States Bankruptcy Court for the District of Minnesota (the "Bankruptcy Court") and the Debtor Company and the Debtors have continued to operate their businesses and manage their properties as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

WHEREAS, the Issuer has duly authorized the creation and issuance of $22,500,000 aggregate principal amount of its Floating Rate Senior Secured Amortizing PIK Toggle Notes due December [•], 2019 (the "Notes") pursuant to the Indenture, which Notes shall be issued in connection with the Closing (as defined in that certain asset purchase agreement, dated as of December [•], 2016, by and among MG Initial Purchaser, LLC, a Delaware limited liability company, the Issuer, the Debtor Company and certain of its Subsidiaries) in connection with the sale of assets by the Debtor Company to the Issuer; and

WHEREAS, each of the Issuer and ERP Compliant COKE, LLC, a Delaware limited liability company ("Coke Entity") has duly authorized the execution and delivery of the Indenture;

WHEREAS, pursuant to the Indenture, the Issuer shall issue its Notes upon the terms and subject to the conditions set forth therein.

NOW, THEREFORE, the Issuer, the Coke Entity, the Guarantors who are signatories hereto and the Trustee agree as follows for the benefit of each other and for the equal and ratable benefit of the Holders of the Notes.

SECTION 1. DEFINED TERMS

1.1 Definitions. (a) Unless otherwise defined herein, terms defined in the Indenture (attached hereto as Exhibit 1) and used herein shall have the meanings given to them in the Indenture, and the following terms are used herein as defined in the New York UCC: Chattel Paper and Instruments.

(b) The following terms shall have the following meanings:

"Agreement": this Guarantee Agreement, as the same may be amended, supplemented or otherwise modified from time to time.

"Asset Purchase Agreement": that certain asset purchase agreement, dated as of December [•], 2016, by and among MG Initial Purchaser, LLC, a Delaware limited liability company, the Issuer, the Debtor Company and certain of its Subsidiaries.

"Bankruptcy Court": as defined in the preamble hereto.

"Beneficiary Parties": the collective reference to the Trustee, Collateral Agent and the Holders.

"Calculation Agent": as defined in the preamble hereto.

"Coke Entity": as defined in the preamble hereto.

"Collateral Agent": as defined in the preamble hereto.

"Contracts": the Asset Purchase Agreement, the Transaction Documents and the Notes Documents.

"Debtor Company": as defined in the preamble hereto.

"Debtors": as defined in the preamble hereto.

"Guarantee Shares": the shares of Capital Stock listed on Schedule 2, together with any other shares, stock certificates, options, interests or rights of any nature whatsoever in respect of the Capital Stock listed on Schedule 2 (or of any successor in interest by merger, consolidation or otherwise) that may be issued or granted to, or held by, the Limited Guarantor while this Agreement is in effect.

"Guarantee Shares Issuers": the collective reference to each issuer of any Guarantee Shares.

"Guaranteed Obligations": as defined in Section 2.1(a).

"Guarantor Obligations": with respect to any Guarantor, all obligations and liabilities of such Guarantor which may arise under or in connection with this Agreement (including, without limitation, Section 2 of this Agreement) or any other Notes Document, in each case whether on account of guarantee obligations, reimbursement obligations, fees, indemnities, costs, expenses or otherwise (including, without limitation, all fees and disbursements of counsel to the Trustee or the Collateral Agent or to the Holders that are required to be paid by such Guarantor pursuant to the terms of this Agreement or any other Notes Document).

"Guarantors": as defined in the preamble hereto.

"Holders": as defined in the preamble hereto.

"Indenture": as defined in the preamble hereto.

"Issuer": as defined in the preamble hereto.

"Issuer Obligations": means, with respect to the Indenture, any principal (including the Amortization Amounts to be paid on each Amortization Payment Date), interest (including any interest accruing subsequent to the filing of a petition in bankruptcy, reorganization or similar proceeding at the rate provided for in the documentation with respect thereto, whether or not such interest is an allowed claim under applicable state, federal or foreign law), other monetary obligations, penalties, fees, indemnifications, reimbursements (including reimbursement obligations with respect to letters of credit and banker's acceptances), damages and other liabilities of the Issuer under the Indenture or the Notes.

"Limited Guarantor": means Ana Mercedes Clarke.

"Magnetation Contracts" means any material written contract or agreement between the Issuer and any Person (in each case, whether third party or intercompany) assumed by the Issuer from one or more of the Debtors in connection with the transactions described in the APA and related agreements.

"Material Adverse Effect" means a material adverse effect on and/or material adverse developments with respect to (i) the business, operations, properties, assets or condition (financial or otherwise) of the Issuer and its Subsidiaries taken as a whole, (ii) the ability of the Issuer or any of its Subsidiaries to fully and timely perform its or their Obligations, (iii) the legality, validity, binding effect or enforceability against the Issuer or any of the Guarantors of the Notes, this Indenture or any other Notes Document, or (iv) the rights, remedies and benefits available to, or conferred upon, the Trustee, the Collateral Agent or the Holders under this Agreement or the Indenture.

"Notes": as defined in the preamble hereto.

"Obligations": (i) in the case of the Issuer, the Issuer Obligations, and (ii) in the case of each Guarantor, its Guarantor Obligations.

"Paying Agent": as defined in the preamble hereto.

"Registrar": as defined in the preamble hereto.

"Transaction": means the sale of assets pursuant to the Asset Purchase Agreement and the issuance of the Notes pursuant to the Indenture.

"Transaction Documents": as defined in the Asset Purchase Agreement.

"Trustee": as defined in the preamble hereto.

"Unlimited Guarantor": means Thomas Matthew Clarke.

1.2 Other Definitional Provisions. (a) The words "hereof," "herein", "hereto" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section and Schedule references are to this Agreement unless otherwise specified.

(b) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

SECTION 2. GUARANTEE

2.1 Guarantee.

(a) Each of the Guarantors hereby, jointly and severally, irrevocably and unconditionally guarantees on a senior unsecured basis to each Holder and to the Trustee and to each of their successors and assigns, irrespective of the validity and enforceability of the Indenture, the Notes or any other Issuer Obligations thereunder, that: (1) the principal, premium, if any, and interest on the Notes shall be promptly paid in full when due, whether at Stated Maturity, by acceleration, redemption or otherwise, and interest on the overdue principal and interest on the Notes, if any, if lawful, and all other Issuer Obligations to the Holders, the Trustee and Collateral Agent under the Indenture or the Notes shall be promptly paid in full or performed, all in accordance with the terms thereof; and (2) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that same shall be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at Stated Maturity, by acceleration or otherwise (collectively, the "Guaranteed Obligations"). If an Event of Default occurs and is continuing under Section 6.01(a)(1), (a)(2) or (a)(9) of the Indenture, and the sequence of Standstill Periods and Obligor and Coke Guarantor (as such terms are defined in the Indenture) asset sales required under the Indenture has not resulted in full payment of the Issuer Obligations by the Issuer and the Coke Guarantor, the Guarantors shall be jointly and severally obligated to pay immediately any amounts due under their Guarantor Obligations in accordance with Section 6.02(b) of the Indenture, subject to Section 2.2(b) hereof. Each Guarantor agrees that this is a guarantee of payment and not a guarantee of collection.

(b) Each of the Guarantors hereby agrees that their Guarantor Obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Notes or the Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder with respect to any provisions hereof or thereof, the recovery of any judgment against the Issuer, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a Guarantor. Each Guarantor hereby waives diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Issuer, any right to require a proceeding first against the Issuer, protest, notice and all demands whatsoever and covenants that the Guarantor Obligations shall not be discharged except by complete performance of the Obligations contained in the Notes, the Indenture and herein.

(c) Each of the Guarantors also agrees, jointly and severally, in accordance with Sections 6.02(b) and 7.07 of the Indenture and subject to Section 2.2(b) hereof, to pay any

and all costs and expenses (including reasonable attorneys' fees and expenses) incurred by the Trustee, the Collateral Agent or any Holder in enforcing any rights under this Agreement or the Indenture.

(d) If any Holder, the Trustee or the Collateral Agent is required by any court or otherwise to return to the Issuer, any Guarantor or any custodian, trustee, liquidator or other similar official acting in relation to the Issuer or any Guarantor, any amount paid either to the Trustee, the Collateral Agent or such Holder, this Agreement, to the extent theretofore discharged, shall be reinstated in full force and effect.

(e) Each Guarantor agrees that it shall not be entitled to enforce any right of subrogation in relation to the Holders in respect of any Obligations pursuant to the Indenture and hereby until payment in full of all Obligations pursuant to the Indenture and hereby. Each Guarantor further agrees that, as between the Guarantors, on the one hand, and the Holders, the Trustee and the Collateral Agent, on the other hand, (1) the maturity of the Obligations pursuant to the Indenture and hereby may be accelerated as provided in Article 6 of the Indenture for the purposes of this Agreement, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the Obligations pursuant to this Agreement, and (2) in the event of any declaration of acceleration of such Obligations as provided in Article 6 of the Indenture, such Obligations (whether or not due and payable) shall forthwith become due and payable by the Guarantors for the purpose of this Agreement in accordance with Section 6.02(b) of the Indenture, subject to Section 2.2(b) hereof. The Guarantors shall have the right to seek contribution from any non-paying Obligor (as defined in the Indenture) so long as the exercise of such right does not impair the rights of the Trustee, the Collateral Agent or the Holders hereunder, *provided, however*, the contribution provided by the Limited Guarantor hereunder shall be limited pursuant to Section 2.2(b).

(f) The Guarantor Obligations shall remain in full force and effect and continue to be effective should any petition be filed by or against the Issuer for liquidation or reorganization, should the Issuer become insolvent or make an assignment for the benefit of creditors or should a receiver or trustee be appointed for all or any significant part of the Issuer's assets, and shall, to the fullest extent permitted by law, continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Notes are, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee on the Notes or the Guarantor Obligations, whether as a "voidable preference," "fraudulent transfer" or otherwise, all as though such payment or performance had not been made. In the event that any payment or any part thereof, is rescinded, reduced, restored or returned, the Notes shall, to the fullest extent permitted by law, be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

(g) In case any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

(h) Each payment to be made by a Guarantor in respect of its obligations hereunder shall be made without set-off, counterclaim, reduction or diminution of any kind or nature.

2.2 Limitation on Guarantor Liability.

(a) Each Guarantor, and by its acceptance of Notes, each Holder, hereby confirms that it is the intention of all such parties that the Guarantor Obligations of such Guarantor not constitute a fraudulent conveyance or a fraudulent transfer for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law to the extent applicable to any Guarantor Obligations. To effectuate the foregoing intention, the Trustee, the Collateral Agent, the Holders and the Guarantors irrevocably agree that the Guarantor Obligations of each Guarantor shall be limited to the maximum amount as will, after giving effect to such maximum amount and all other contingent and fixed liabilities of such Guarantor that are relevant under such laws and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Guarantor in respect of the Guarantor Obligations of such other Guarantor under this Section 2, result in the Guarantor Obligations of such Guarantor under its Guarantor Obligations not constituting a fraudulent conveyance or fraudulent transfer under applicable law.

(b) Notwithstanding anything contained in this Agreement or the Contracts, the Guarantor Obligations of the Limited Guarantor pursuant to this Agreement shall be limited to the value (as certified pursuant to the certificate delivered to the Trustee) of the Limited Guarantor's interest in the "Guarantee Shares" as of the date hereof.[1] The Limited Guarantor shall not have any obligation or liability to pay in excess of such value under any circumstance.

2.3 Execution and Delivery.

(a) To evidence its Guarantor Obligations set forth in Section 2.1, each Guarantor hereby agrees that it shall execute, or cause to be validly executed on such Guarantor's behalf, this Agreement.

(b) Each Guarantor hereby agrees that its Guarantor Obligations set forth herein shall remain in full force and effect notwithstanding the absence of the endorsement of any notation of such Guarantor Obligations on the Notes.

(c) If an Officer whose signature is on the Indenture no longer holds that office at the time the Trustee authenticates the Notes, the obligations of the Guarantors hereunder shall be valid nevertheless.

(d) The delivery of any Note by the Trustee, after the authentication thereof under the Indenture, shall constitute due delivery of the Guarantor Obligations set forth in this Agreement on behalf of the Guarantors.

2.4 Subrogation.

Each Guarantor shall be subrogated to all rights of the Holders against the Issuer and Coke Entity in respect of any amounts paid by any Guarantor pursuant to the provisions of

[1] Each of the Guarantors party hereto has executed and delivered a certificate to the Trustee, on behalf of the Holders of the Notes certifying that as of the date hereof the value of the Guarantee Shares significantly exceeds the aggregate principal amount of Notes issued under the Indenture on the date on which such Indenture was executed.

Section 2.1; *provided* that, if an Event of Default has occurred and is continuing, no Guarantor shall be entitled to enforce or receive any payments arising out of, or based upon, such right of subrogation until all amounts then due and payable by the Issuer under the Indenture or the Notes shall have been paid in full.

2.5 Benefits Acknowledged.

Each Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated by the Indenture and that the guarantee and waivers made by it pursuant to this Agreement are knowingly made in contemplation of such benefits.

2.6 Release of Guarantees.

The Guarantor Obligations of a Guarantor shall be automatically and unconditionally released and discharged, and no further action by such Guarantor, the Issuer, the Trustee or the Collateral Agent shall be required for the release of such Guarantor Obligations, upon (x) the discharge of the Issuer's Obligations in accordance with Article 12 of the Indenture, (y) the payment in full of the principal, accrued interest and unpaid premium, if any, on the Notes upon stated maturity, or (z) upon redemption of the Notes pursuant to Article 3 of the Indenture.

At the written request of the Issuer, the Trustee and Collateral Agent shall execute and deliver any documents reasonably required in order to evidence such release, discharge and termination in respect of the applicable Guarantor Obligations.

2.7 Payments.

Each Guarantor hereby guarantees that payments hereunder shall be paid to the Paying Agent or Trustee, as applicable, without set off or counterclaim in United States dollars at the office of the Paying Agent or Trustee, as applicable and as set forth in Section 2 of the Indenture.

SECTION 3. [RESERVED]

SECTION 4. REPRESENTATIONS AND WARRANTIES

Each Guarantor hereby represents and warrants to the Trustee and each Holder as of the date of this Agreement that:

4.1 Principal Residence.

On the date hereof, such Guarantor's principal residence is specified on Schedule 1.

4.2 Guarantee Shares. (a) All of the Guarantee Shares have been duly and validly issued and are fully paid and nonassessable.

(b) The Limited Guarantor is the record and beneficial owner of, and has good and marketable title to, the Guarantee Shares, free of any and all liens or options in favor of, or claims of, any other Person.

4.3 Contracts. To the Guarantors' actual knowledge (a) no consent of any party (other than such Guarantor) to any Contract such Guarantor is a party to is required, or purports to be required, in connection with the execution, delivery and performance of this Agreement, except as has been obtained.

(b) This Agreement and each other Contract such Guarantor is party to (with respect to the Magnetation Contracts, to the Issuer's actual knowledge) is in full force and effect and constitutes a valid and legally enforceable obligation of the parties thereto, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing.

(c) No consent or authorization of, filing with or other act by or in respect of any Governmental Authority is required in connection with the execution, delivery, performance, validity or enforceability of this Agreement and each other Contract such Guarantor is party to (with respect to the Magnetation Contracts, to the Issuer's actual knowledge) by any party thereto other than those which have been duly obtained, made or performed, are in full force and effect and do not subject the scope of any such Contract to any material adverse limitation, either specific or general in nature.

(d) Neither such Guarantor nor any of the other parties to this Agreement and each other Contract such Guarantor is party to (with respect to the Magnetation Contracts, to the Issuer's actual knowledge) is in default in the performance or observance of any of the terms thereof in any manner that, in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(e) The right, title and interest of such Guarantor in, to and under this Agreement and each other Contract such Guarantor is party to (with respect to the Magnetation Contracts, to the Issuer's actual knowledge) are not subject to any defenses, offsets, counterclaims or claims that, in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(f) Such Guarantor has delivered to the Trustee and Collateral Agent a complete and correct copy of this Agreement and each other Contract such Guarantor is party to (with respect to the Magnetation Contracts, to the Issuer's actual knowledge), including all amendments, supplements and other modifications thereto.

(g) No amount payable to such Guarantor under or in connection with this Agreement and each other Contract such Guarantor is party to (with respect to the Magnetation Contracts, to the Issuer's actual knowledge) is evidenced by any Instrument or Chattel Paper which has not been delivered to the Trustee and Collateral Agent.

(h) None of the parties to this Agreement and each other Contract such Guarantor is party to (with respect to the Magnetation Contracts, to the Issuer's actual knowledge) is a Governmental Authority.

4.4 Litigation. There is no action, suit, investigation or proceeding pending against, or to the knowledge of such Guarantor, threatened against or affecting, such Guarantor before any arbitrator or any Governmental Authority which in any manner challenges or seeks to prevent, enjoin, alter or materially delay the transactions contemplated by this Agreement.

4.5 Inspections; No Other Representations. Such Guarantor is an informed and sophisticated person or has engaged expert advisors, experienced in the evaluation of the Transaction and the guarantee provided hereunder. Such Guarantor has undertaken such investigation and has been provided with and has evaluated such documents and information as it has deemed necessary to enable it to make an informed and intelligent decision with respect to the execution, delivery and performance of this Agreement. Such Guarantor shall undertake such further investigation and request such additional documents and information as it deems necessary.

4.6 Solvency. Each of the Guarantors is Solvent. As used herein, the term "Solvent" means, with respect to any Person on a particular date, that on such date (i) the fair market value of the assets of such Person is greater than the total amount of liabilities (including contingent liabilities) of such Person, (ii) the present fair salable value of the assets of such Person is greater than the amount that will be required to pay the probable liabilities of such Person on its debts as they become absolute and matured, (iii) such Person is able to realize upon its assets and pay its debts and other liabilities, including contingent obligations, as they mature and (iv) such Person does not have unreasonably small capital.

4.7 No Existing Event of Default. No event of default exists under any contract, indenture, mortgage, loan agreement, note, lease or other agreement or instrument constituting Indebtedness.

SECTION 5. COVENANTS

Each Guarantor covenants and agrees with the Trustee and the Holders that, from and after the date of this Agreement until (x) the payment in full of the principal of, accrued and unpaid interest and premium, if any, on the Notes at the stated maturity or upon redemption pursuant to Article 3 of the Indenture, (y) the Indenture has been satisfied and discharged in accordance with Article 12 of the Indenture, or (z) as to the Limited Guarantor, the payment in full of the Obligations of the Limited Guarantor pursuant to Section 2.2(b) hereof:

5.1 Changes in Name, etc. Such Guarantor shall not, except upon 15 days' prior written notice to the Trustee and the Collateral Agent, (i) change his or her principal residence from that referred to in Section 4.1 or (ii) change his or her name.

5.2 Contracts. Such Guarantor shall perform and comply in all material respects with all its obligations under this Agreement and each other Contract such Guarantor is party to, subject to any available claims, rights or defenses thereunder.

5.3 Taxes. Such Guarantor shall pay all taxes, assessments and governmental levies except (a) such as are being contested in good faith and by appropriate documentation, negotiations or proceedings or (b) where the failure to effect such payment is not adverse in any material respect to the Trustee, Collateral Agent or the Holders.

5.4 Further Assurances. Such Guarantor shall execute any and all further documents, financing statements, agreements and instruments, and take all further actions that may be required under applicable law, or that the Trustee or Collateral Agent may reasonably request, to facilitate, and to avoid conflict with, the transactions set forth in the Indenture and other Notes Documents, and Asset Purchase Agreement and the Transaction Documents, and the guarantee hereunder.

5.5 Financial Statements.

The Unlimited Guarantor shall deliver, on an annual basis or as reasonably requested more frequently than annually by the Trustee acting on behalf of the Holders of the Notes, financial statements and other assurances of such Guarantor's ability to satisfy such Guarantor's Guarantor Obligations and any other obligations existing under this Agreement.

5.6 Stay, Extension and Usury Laws. Each of the Guarantors covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Agreement or any provisions of the Indenture incorporated by reference herein; and each of the Guarantors (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenant that it shall not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but shall suffer and permit the execution of every such power as though no such law has been enacted.

5.7 Notices.

Such Guarantor shall advise the Trustee and the Holders of the Notes promptly, in reasonable detail, of the occurrence of (i) any event which could reasonably be expected to have a Material Adverse Effect on the Issuer or the guarantee hereunder or (ii) any event that is an Event of Default under the Indenture, subject expressly to Section 6 herein.

SECTION 6. REMEDIAL PROVISIONS

6.1 Guarantee Shares. If an Event of Default shall occur and be continuing, (i) the Trustee shall have the right, subject to Section 6.02(b) of the Indenture and the passage of time and other asset liquidation activity described therein, to receive payment in respect of the Guaranteed Obligations (x) in the case of the Unlimited Guarantor, without any limit as to contribution or liability other than as set forth in Section 2.2(a); and (y) in the case of the Limited Guarantor, with limited liability and/or contribution as set forth in Sections 2.2(a) and (b).

6.2 Application of Proceeds. The Trustee, Collateral Agent or Paying Agent, as applicable, shall apply all or any part of proceeds of the guarantee set forth in Section 2 in payment of the Obligations pursuant to Section 6.13 of the Indenture.

6.3 Events of Default under the Indenture. Each Guarantor agrees that the provisions of Article 6 of the Indenture as they apply to Guarantors under the Indenture apply to each Guarantor under this Agreement, mutatis mutandis. For the avoidance of doubt, each of the Events of Default in Section 6.01(a)(3), (4), (6), (7), (10), and (13) of the Indenture are incorporated by reference herein and apply equally to each of the Guarantors under this Agreement, mutatis mutandis, and any Event of Default herein as it relates to a Guarantor hereunder shall be deemed an Event of Default under the Indenture and subject to the limitations on enforcement of rights against the Guarantors set forth in Section 6.02 of the Indenture.

6.4 Subordination. Each Guarantor hereby agrees that, upon the occurrence and during the continuance of an Event of Default, unless otherwise agreed by the Trustee and Collateral Agent, all Indebtedness owing by it to any Subsidiary of the Issuer shall be fully subordinated to the indefeasible payment in full in cash of such Guarantor's Obligations.

SECTION 7. THE TRUSTEE

7.1 The Appointment of the Trustee and Collateral Agent as Attorneys-in-Fact, etc.

(a) Each Guarantor hereby irrevocably constitutes and appoints the Trustee and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Guarantor and in the name of such Guarantor or in its own name, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement.

Anything in this Section 7.1(a) to the contrary notwithstanding, the Trustee agrees that it will not exercise any rights under the power of attorney provided for in this Section 7.1(a) unless (x) the Specified Event of Default has occurred and is continuing or (y) any Deficiency Amount remains outstanding following the Third Standstill Expiration Date.

(b) If any Guarantor fails to perform or comply with any of its agreements contained herein, the Trustee, at its option, but without any obligation so to do, may perform or comply, or otherwise cause performance or compliance, with such agreement.

(c) The expenses of the Trustee incurred in connection with actions undertaken as provided in this Section 7.1, together with interest thereon at a rate per annum equal to the highest rate per annum at which interest would then be payable on the Notes, from the date of payment by the Trustee to the date reimbursed by the relevant Guarantor, shall be payable by such Guarantor to the Trustee on demand.

(d) Each Guarantor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. All powers, authorizations and agencies contained in this Agreement are coupled with an interest and are irrevocable until this Agreement is terminated and the security interests created hereby are released.

7.2 Authority of the Trustee. Each Guarantor acknowledges that the rights and responsibilities of the Trustee under this Agreement or the Indenture with respect to any action taken by the Trustee or the exercise or non-exercise by the Trustee of any option, voting right,

request, judgment or other right or remedy provided for herein or the Indenture or resulting or arising out of this Agreement or the Indenture shall, as between the Trustee and the Holders, be governed by the Indenture and by such other agreements with respect thereto as may exist from time to time among them, but, as between the Trustee and the Guarantors, the Trustee shall be conclusively presumed to be acting as agent for the Holders with full and valid authority so to act or refrain from acting, and no Guarantor shall be under any obligation, or entitlement, to make any inquiry respecting such authority.

7.3 Trustee May File Proofs of Claim. The Trustee may file proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, their agents and counsel) and the Holders of the Notes allowed in any judicial proceedings relative to the Issuer (or any other obligor upon the Notes, including the Guarantors), its creditors or its property and is entitled and empowered to participate as a member in any official committee of creditors appointed in such matter and to collect, receive and distribute any money or other property payable or deliverable on any such claims. Any custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee and its agents and counsel, and any other amounts due the Trustee as provided in Section 7.07 of the Indenture. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee as provided in Section 7.07 of the Indenture out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

7.4 Other. Each Guarantor agrees that the provisions of Article 7 of the Indenture applicable to any Guarantor thereunder shall apply to such Guarantor under this Agreement, *mutatis mutandis*.

SECTION 8. MISCELLANEOUS

8.1 Amendments in Writing. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except in accordance with Article 9 of the Indenture.

8.2 Notices. All notices, requests and demands to or upon the Trustee or any Guarantor hereunder shall be effected in the manner provided for in Section 13.02 of the Indenture; *provided* that any such notice, request or demand to or upon any Guarantor shall be addressed to such Guarantor at its notice address set forth on Schedule 1.

8.3 No Waiver by Course of Conduct; Cumulative Remedies. Neither the Trustee nor any Holder shall by any act (except by a written instrument pursuant to Section 8.1), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or Event of Default. No failure to exercise, nor any delay in exercising, on the part of the Trustee or any Holder, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by the Trustee or any Holder of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which the Trustee or any Holder would otherwise have on any future occasion. The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any other rights or remedies provided by law.

8.4 Enforcement Expenses; Indemnification. (a) Each Guarantor agrees to pay or reimburse each Holder and the Trustee for all its reasonable costs and expenses incurred in collecting against such Guarantor under the guarantee contained in Section 2 or otherwise enforcing or preserving any rights under this Agreement and the other Notes Documents to which such Guarantor is a party, including, without limitation, the reasonable fees and disbursements of counsel (including the allocated fees and expenses of in-house counsel) to each Holder and of counsel to the Trustee.

(b) Each Guarantor agrees to pay, and to save the Trustee and the Holders harmless from, any and all liabilities with respect to, or resulting from any delay in paying, any and all stamp, excise, sales or other taxes which may be payable or determined to be payable in connection with any of the transactions contemplated by this Agreement.

(c) Each Guarantor agrees to pay, and to save the Trustee and the Holders harmless from, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance and administration of this Agreement to the extent the Issuer would be required to do so pursuant to Section 7.07 of the Indenture.

(d) The agreements in this Section 8.4 shall survive repayment of the Obligations and all other amounts payable under the Indenture and the other Notes Documents.

8.5 Successors and Assigns. This Agreement shall be binding upon the successors and assigns of each Guarantor and shall inure to the benefit of the applicable Beneficiary Parties and their successors and assigns; *provided* that no Guarantor may assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the Trustee.

8.6 Calculations. The Guarantors hereto acknowledge that all calculations of the Calculation Agent, in the absence of manifest error, shall be conclusive for all purposes and binding and neither the Trustee nor the Paying Agent shall have the duty to verify determinations of interest rates made by the Calculation Agent.

8.7 Counterparts. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by email or telecopy), and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

8.8 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

8.9 Section Headings. The Section headings used in this Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

8.10 Integration. This Agreement and the other Notes Documents represent the agreement of the Guarantors and the applicable Beneficiary Parties with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by the Trustee or any Holder relative to subject matter hereof and thereof not expressly set forth or referred to herein or in the other Notes Documents.

8.11 **GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.**

8.12 Submission To Jurisdiction; Waivers. Each Guarantor hereby irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to this Agreement, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of any state or federal court sitting in the Borough of Manhattan in the City of New York, and appellate courts from any thereof;

(b) consents that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such Guarantor at its address referred to in Section 8.2 or at such other address of which the Trustee shall have been notified pursuant thereto;

(d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction; and

(e) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section any special, exemplary, punitive or consequential damages.

8.13 Acknowledgements. Each Guarantor hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Notes Documents to which it is a party (if any);

(b) neither the Trustee nor any Holder has any fiduciary relationship with or duty to any Guarantor arising out of or in connection with this Agreement or any of the other Notes Documents, and the relationship between the Guarantors, on the one hand, and the Trustee and Holders, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the other Notes Documents or otherwise exists by virtue of the transactions contemplated hereby among the Holders or among the Guarantors and the Holders.

8.14 U.S.A. PATRIOT Act. The parties hereto acknowledge that in accordance with Section 326 of the U.S.A. PATRIOT Act, the Trustee is required to obtain, verify, and record information that identifies each Person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Agreement agree that they shall provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the U.S.A. PATRIOT Act.

8.15 **WAIVER OF JURY TRIAL.** EACH OF THE GUARANTORS, THE TRUSTEE AND COLLATERAL AGENT HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE INDENTURE, THE NOTES, THE OTHER NOTES DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY.

8.16 Effectiveness of Guarantee Agreement.

No party shall have any rights, obligations or other benefits or responsibilities hereunder unless and until such time as the parties have issued the Notes hereunder in connection with the Closing (as defined in the APA), and the Closing has occurred; provided that the Trustee shall be entitled to an Officers' Certificate and Opinion of Counsel that such closing has occurred and that all conditions precedent have been satisfied.

[*Signatures on following page*]

IN WITNESS WHEREOF, each of the undersigned has caused this Guarantee Agreement to be duly executed and delivered as of the date first above written.

ERP IRON ORE, LLC

By

By: _____
Name:
Title:

ERP COMPLIANT COKE, LLC

By

By: _____
Name:
Title:

THOMAS MATTHEW CLARKE, as Unlimited Guarantor

By: _____
Name: Thomas Matthew Clarke

ANA MERCEDES CLARKE, as Limited Guarantor

By: _____
Name: Ana Mercedes Clarke

WILMINGTON SAVINGS FUND SOCIETY, FSB
as Trustee

By: _____
Name:
Title:

Schedule 1

NOTICE ADDRESSES OF GUARANTORS

For all Guarantors:

c/o ERP Compliant Fuels, LLC
15 Appledore Lane
Natural Bridge, Virginia 24578
Attention: Tom Clarke
Email: Tom.Clarke@kissito.org

Schedule 2

DESCRIPTION OF GUARANTEE SHARES

Guarantee Shares:

Guarantee Shares Issuer	Percentage ownership
Seneca Coal Resources, LLC	38.5%
Seminole Coal Resources, LLC	38.5%
Conuma Coal Resources Limited	38.5%[2]

[2] The Limited Guarantor owns, indirectly, 38.5% of Conuma Coal Resources Limited, which is directly owned 100.0% by ERP Coal Resources Limited through its holding of 1,000,000 Class A Voting common shares in Conuma Coal Resources Limited, evidenced by the share certificate labeled "3AC".

Schedule 3

LOCATION OF JURISDICTION OF PRIMARY RESIDENCE

Guarantor	Location of Primary Residence
Tom Clarke	Commonwealth of Virginia
Ana Clarke	Commonwealth of Virginia

EXHIBIT I

Form of Ana Clarke Guaranty

Execution Version

THIS GUARANTEE AGREEMENT IS SUBJECT TO THE PROVISIONS OF THE INDENTURE DATED AS OF DECEMBER [•], 2016 (AS AMENDED, RESTATED, SUPPLEMENTED OR OTHERWISE MODIFIED FROM TIME TO TIME), AMONG ERP IRON ORE, LLC, AS ISSUER, THE GUARANTORS PARTY THERETO, AND WILMINGTON SAVINGS FUND SOCIETY, FSB, AS TRUSTEE, COLLATERAL AGENT, PAYING AGENT, REGISTRAR AND CALCULATION AGENT.

GUARANTEE AGREEMENT

made by

THOMAS MATTHEW CLARKE,

ANA MERCEDES CLARKE,

ERP IRON ORE, LLC

and

ERP COMPLIANT COKE, LLC

in favor of

WILMINGTON SAVINGS FUND SOCIETY, FSB

as Trustee under the Indenture governing the Floating Rate Senior Secured Amortizing PIK Toggle Notes due 2019 issued by ERP Iron Ore, LLC

and

each Holder of Notes

Dated as of December [•], 2016

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GUARANTEE AGREEMENT

GUARANTEE AGREEMENT, dated as of December [•], 2016, made by each of the signatories hereto (together with any other entity that may become a party hereto as provided herein, the "Guarantors"), in favor of Wilmington Savings Fund Society, FSB, as trustee (in such capacity, the "Trustee") on behalf of the holders (the "Holders") of the Notes (as defined below) issued pursuant to the indenture, dated as of December [•], 2016 (as amended, supplemented or otherwise modified from time to time, the "Indenture"), among ERP Iron Ore, LLC, a Virginia limited liability company (the "Issuer"), the guarantors listed on the signature pages thereto and Wilmington Savings Fund Society, FSB, as Trustee, as collateral agent (in such capacity, the "Collateral Agent"), paying agent (in such capacity, the "Paying Agent"), registrar (in such capacity, the "Registrar") and calculation agent (in such capacity, the "Calculation Agent").

W I T N E S S E T H:

WHEREAS, on May 5, 2015, Magnetation LLC (the "Debtor Company") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq., in the United States Bankruptcy Court for the District of Minnesota (the "Bankruptcy Court") and the Debtor Company and the Debtors have continued to operate their businesses and manage their properties as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

WHEREAS, the Issuer has duly authorized the creation and issuance of $22,500,000 aggregate principal amount of its Floating Rate Senior Secured Amortizing PIK Toggle Notes due December [•], 2019 (the "Notes") pursuant to the Indenture, which Notes shall be issued in connection with the Closing (as defined in that certain asset purchase agreement, dated as of December [•], 2016, by and among MG Initial Purchaser, LLC, a Delaware limited liability company, the Issuer, the Debtor Company and certain of its Subsidiaries) in connection with the sale of assets by the Debtor Company to the Issuer; and

WHEREAS, each of the Issuer and ERP Compliant COKE, LLC, a Delaware limited liability company ("Coke Entity") has duly authorized the execution and delivery of the Indenture;

WHEREAS, pursuant to the Indenture, the Issuer shall issue its Notes upon the terms and subject to the conditions set forth therein.

NOW, THEREFORE, the Issuer, the Coke Entity, the Guarantors who are signatories hereto and the Trustee agree as follows for the benefit of each other and for the equal and ratable benefit of the Holders of the Notes.

SECTION 1. DEFINED TERMS

1.1 Definitions. (a) Unless otherwise defined herein, terms defined in the Indenture (attached hereto as Exhibit 1) and used herein shall have the meanings given to them in the Indenture, and the following terms are used herein as defined in the New York UCC: Chattel Paper and Instruments.

(b) The following terms shall have the following meanings:

"Agreement": this Guarantee Agreement, as the same may be amended, supplemented or otherwise modified from time to time.

"Asset Purchase Agreement": that certain asset purchase agreement, dated as of December [•], 2016, by and among MG Initial Purchaser, LLC, a Delaware limited liability company, the Issuer, the Debtor Company and certain of its Subsidiaries.

"Bankruptcy Court": as defined in the preamble hereto.

"Beneficiary Parties": the collective reference to the Trustee, Collateral Agent and the Holders.

"Calculation Agent": as defined in the preamble hereto.

"Coke Entity": as defined in the preamble hereto.

"Collateral Agent": as defined in the preamble hereto.

"Contracts": the Asset Purchase Agreement, the Transaction Documents and the Notes Documents.

"Debtor Company": as defined in the preamble hereto.

"Debtors": as defined in the preamble hereto.

"Guarantee Shares": the shares of Capital Stock listed on Schedule 2, together with any other shares, stock certificates, options, interests or rights of any nature whatsoever in respect of the Capital Stock listed on Schedule 2 (or of any successor in interest by merger, consolidation or otherwise) that may be issued or granted to, or held by, the Limited Guarantor while this Agreement is in effect.

"Guarantee Shares Issuers": the collective reference to each issuer of any Guarantee Shares.

"Guaranteed Obligations": as defined in Section 2.1(a).

"Guarantor Obligations": with respect to any Guarantor, all obligations and liabilities of such Guarantor which may arise under or in connection with this Agreement (including, without limitation, Section 2 of this Agreement) or any other Notes Document, in each case whether on account of guarantee obligations, reimbursement obligations, fees, indemnities, costs, expenses or otherwise (including, without limitation, all fees and disbursements of counsel to the Trustee or the Collateral Agent or to the Holders that are required to be paid by such Guarantor pursuant to the terms of this Agreement or any other Notes Document).

"Guarantors": as defined in the preamble hereto.

"Holders": as defined in the preamble hereto.

"Indenture": as defined in the preamble hereto.

"Issuer": as defined in the preamble hereto.

"Issuer Obligations": means, with respect to the Indenture, any principal (including the Amortization Amounts to be paid on each Amortization Payment Date), interest (including any interest accruing subsequent to the filing of a petition in bankruptcy, reorganization or similar proceeding at the rate provided for in the documentation with respect thereto, whether or not such interest is an allowed claim under applicable state, federal or foreign law), other monetary obligations, penalties, fees, indemnifications, reimbursements (including reimbursement obligations with respect to letters of credit and banker's acceptances), damages and other liabilities of the Issuer under the Indenture or the Notes.

"Limited Guarantor": means Ana Mercedes Clarke.

"Magnetation Contracts" means any material written contract or agreement between the Issuer and any Person (in each case, whether third party or intercompany) assumed by the Issuer from one or more of the Debtors in connection with the transactions described in the APA and related agreements.

"Material Adverse Effect" means a material adverse effect on and/or material adverse developments with respect to (i) the business, operations, properties, assets or condition (financial or otherwise) of the Issuer and its Subsidiaries taken as a whole, (ii) the ability of the Issuer or any of its Subsidiaries to fully and timely perform its or their Obligations, (iii) the legality, validity, binding effect or enforceability against the Issuer or any of the Guarantors of the Notes, this Indenture or any other Notes Document, or (iv) the rights, remedies and benefits available to, or conferred upon, the Trustee, the Collateral Agent or the Holders under this Agreement or the Indenture.

"Notes": as defined in the preamble hereto.

"Obligations": (i) in the case of the Issuer, the Issuer Obligations, and (ii) in the case of each Guarantor, its Guarantor Obligations.

"Paying Agent": as defined in the preamble hereto.

"Registrar": as defined in the preamble hereto.

"Transaction": means the sale of assets pursuant to the Asset Purchase Agreement and the issuance of the Notes pursuant to the Indenture.

"Transaction Documents": as defined in the Asset Purchase Agreement.

"Trustee": as defined in the preamble hereto.

"Unlimited Guarantor": means Thomas Matthew Clarke.

1.2 Other Definitional Provisions. (a) The words "hereof," "herein", "hereto" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section and Schedule references are to this Agreement unless otherwise specified.

(b) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

SECTION 2. GUARANTEE

2.1 Guarantee.

(a) Each of the Guarantors hereby, jointly and severally, irrevocably and unconditionally guarantees on a senior unsecured basis to each Holder and to the Trustee and to each of their successors and assigns, irrespective of the validity and enforceability of the Indenture, the Notes or any other Issuer Obligations thereunder, that: (1) the principal, premium, if any, and interest on the Notes shall be promptly paid in full when due, whether at Stated Maturity, by acceleration, redemption or otherwise, and interest on the overdue principal and interest on the Notes, if any, if lawful, and all other Issuer Obligations to the Holders, the Trustee and Collateral Agent under the Indenture or the Notes shall be promptly paid in full or performed, all in accordance with the terms thereof; and (2) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that same shall be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at Stated Maturity, by acceleration or otherwise (collectively, the "Guaranteed Obligations"). If an Event of Default occurs and is continuing under Section 6.01(a)(1), (a)(2) or (a)(9) of the Indenture, and the sequence of Standstill Periods and Obligor and Coke Guarantor (as such terms are defined in the Indenture) asset sales required under the Indenture has not resulted in full payment of the Issuer Obligations by the Issuer and the Coke Guarantor, the Guarantors shall be jointly and severally obligated to pay immediately any amounts due under their Guarantor Obligations in accordance with Section 6.02(b) of the Indenture, subject to Section 2.2(b) hereof. Each Guarantor agrees that this is a guarantee of payment and not a guarantee of collection.

(b) Each of the Guarantors hereby agrees that their Guarantor Obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Notes or the Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder with respect to any provisions hereof or thereof, the recovery of any judgment against the Issuer, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a Guarantor. Each Guarantor hereby waives diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Issuer, any right to require a proceeding first against the Issuer, protest, notice and all demands whatsoever and covenants that the Guarantor Obligations shall not be discharged except by complete performance of the Obligations contained in the Notes, the Indenture and herein.

(c) Each of the Guarantors also agrees, jointly and severally, in accordance with Sections 6.02(b) and 7.07 of the Indenture and subject to Section 2.2(b) hereof, to pay any

and all costs and expenses (including reasonable attorneys' fees and expenses) incurred by the Trustee, the Collateral Agent or any Holder in enforcing any rights under this Agreement or the Indenture.

(d) If any Holder, the Trustee or the Collateral Agent is required by any court or otherwise to return to the Issuer, any Guarantor or any custodian, trustee, liquidator or other similar official acting in relation to the Issuer or any Guarantor, any amount paid either to the Trustee, the Collateral Agent or such Holder, this Agreement, to the extent theretofore discharged, shall be reinstated in full force and effect.

(e) Each Guarantor agrees that it shall not be entitled to enforce any right of subrogation in relation to the Holders in respect of any Obligations pursuant to the Indenture and hereby until payment in full of all Obligations pursuant to the Indenture and hereby. Each Guarantor further agrees that, as between the Guarantors, on the one hand, and the Holders, the Trustee and the Collateral Agent, on the other hand, (1) the maturity of the Obligations pursuant to the Indenture and hereby may be accelerated as provided in Article 6 of the Indenture for the purposes of this Agreement, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the Obligations pursuant to this Agreement, and (2) in the event of any declaration of acceleration of such Obligations as provided in Article 6 of the Indenture, such Obligations (whether or not due and payable) shall forthwith become due and payable by the Guarantors for the purpose of this Agreement in accordance with Section 6.02(b) of the Indenture, subject to Section 2.2(b) hereof. The Guarantors shall have the right to seek contribution from any non-paying Obligor (as defined in the Indenture) so long as the exercise of such right does not impair the rights of the Trustee, the Collateral Agent or the Holders hereunder, *provided, however*, the contribution provided by the Limited Guarantor hereunder shall be limited pursuant to Section 2.2(b).

(f) The Guarantor Obligations shall remain in full force and effect and continue to be effective should any petition be filed by or against the Issuer for liquidation or reorganization, should the Issuer become insolvent or make an assignment for the benefit of creditors or should a receiver or trustee be appointed for all or any significant part of the Issuer's assets, and shall, to the fullest extent permitted by law, continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Notes are, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee on the Notes or the Guarantor Obligations, whether as a "voidable preference," "fraudulent transfer" or otherwise, all as though such payment or performance had not been made. In the event that any payment or any part thereof, is rescinded, reduced, restored or returned, the Notes shall, to the fullest extent permitted by law, be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

(g) In case any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

(h) Each payment to be made by a Guarantor in respect of its obligations hereunder shall be made without set-off, counterclaim, reduction or diminution of any kind or nature.

2.2 Limitation on Guarantor Liability.

(a) Each Guarantor, and by its acceptance of Notes, each Holder, hereby confirms that it is the intention of all such parties that the Guarantor Obligations of such Guarantor not constitute a fraudulent conveyance or a fraudulent transfer for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law to the extent applicable to any Guarantor Obligations. To effectuate the foregoing intention, the Trustee, the Collateral Agent, the Holders and the Guarantors irrevocably agree that the Guarantor Obligations of each Guarantor shall be limited to the maximum amount as will, after giving effect to such maximum amount and all other contingent and fixed liabilities of such Guarantor that are relevant under such laws and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Guarantor in respect of the Guarantor Obligations of such other Guarantor under this Section 2, result in the Guarantor Obligations of such Guarantor under its Guarantor Obligations not constituting a fraudulent conveyance or fraudulent transfer under applicable law.

(b) Notwithstanding anything contained in this Agreement or the Contracts, the Guarantor Obligations of the Limited Guarantor pursuant to this Agreement shall be limited to the value (as certified pursuant to the certificate delivered to the Trustee) of the Limited Guarantor's interest in the "Guarantee Shares" as of the date hereof.[1] The Limited Guarantor shall not have any obligation or liability to pay in excess of such value under any circumstance.

2.3 Execution and Delivery.

(a) To evidence its Guarantor Obligations set forth in Section 2.1, each Guarantor hereby agrees that it shall execute, or cause to be validly executed on such Guarantor's behalf, this Agreement.

(b) Each Guarantor hereby agrees that its Guarantor Obligations set forth herein shall remain in full force and effect notwithstanding the absence of the endorsement of any notation of such Guarantor Obligations on the Notes.

(c) If an Officer whose signature is on the Indenture no longer holds that office at the time the Trustee authenticates the Notes, the obligations of the Guarantors hereunder shall be valid nevertheless.

(d) The delivery of any Note by the Trustee, after the authentication thereof under the Indenture, shall constitute due delivery of the Guarantor Obligations set forth in this Agreement on behalf of the Guarantors.

2.4 Subrogation.

Each Guarantor shall be subrogated to all rights of the Holders against the Issuer and Coke Entity in respect of any amounts paid by any Guarantor pursuant to the provisions of

[1] Each of the Guarantors party hereto has executed and delivered a certificate to the Trustee, on behalf of the Holders of the Notes certifying that as of the date hereof the value of the Guarantee Shares significantly exceeds the aggregate principal amount of Notes issued under the Indenture on the date on which such Indenture was executed.

Section 2.1; *provided* that, if an Event of Default has occurred and is continuing, no Guarantor shall be entitled to enforce or receive any payments arising out of, or based upon, such right of subrogation until all amounts then due and payable by the Issuer under the Indenture or the Notes shall have been paid in full.

2.5 Benefits Acknowledged.

Each Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated by the Indenture and that the guarantee and waivers made by it pursuant to this Agreement are knowingly made in contemplation of such benefits.

2.6 Release of Guarantees.

The Guarantor Obligations of a Guarantor shall be automatically and unconditionally released and discharged, and no further action by such Guarantor, the Issuer, the Trustee or the Collateral Agent shall be required for the release of such Guarantor Obligations, upon (x) the discharge of the Issuer's Obligations in accordance with Article 12 of the Indenture, (y) the payment in full of the principal, accrued interest and unpaid premium, if any, on the Notes upon stated maturity, or (z) upon redemption of the Notes pursuant to Article 3 of the Indenture.

At the written request of the Issuer, the Trustee and Collateral Agent shall execute and deliver any documents reasonably required in order to evidence such release, discharge and termination in respect of the applicable Guarantor Obligations.

2.7 Payments.

Each Guarantor hereby guarantees that payments hereunder shall be paid to the Paying Agent or Trustee, as applicable, without set off or counterclaim in United States dollars at the office of the Paying Agent or Trustee, as applicable and as set forth in Section 2 of the Indenture.

SECTION 3. [RESERVED]

SECTION 4. REPRESENTATIONS AND WARRANTIES

Each Guarantor hereby represents and warrants to the Trustee and each Holder as of the date of this Agreement that:

4.1 Principal Residence.

On the date hereof, such Guarantor's principal residence is specified on Schedule 1.

4.2 Guarantee Shares. (a) All of the Guarantee Shares have been duly and validly issued and are fully paid and nonassessable.

(b) The Limited Guarantor is the record and beneficial owner of, and has good and marketable title to, the Guarantee Shares, free of any and all liens or options in favor of, or claims of, any other Person.

4.3 Contracts. To the Guarantors' actual knowledge (a) no consent of any party (other than such Guarantor) to any Contract such Guarantor is a party to is required, or purports to be required, in connection with the execution, delivery and performance of this Agreement, except as has been obtained.

(b) This Agreement and each other Contract such Guarantor is party to (with respect to the Magnetation Contracts, to the Issuer's actual knowledge) is in full force and effect and constitutes a valid and legally enforceable obligation of the parties thereto, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing.

(c) No consent or authorization of, filing with or other act by or in respect of any Governmental Authority is required in connection with the execution, delivery, performance, validity or enforceability of this Agreement and each other Contract such Guarantor is party to (with respect to the Magnetation Contracts, to the Issuer's actual knowledge) by any party thereto other than those which have been duly obtained, made or performed, are in full force and effect and do not subject the scope of any such Contract to any material adverse limitation, either specific or general in nature.

(d) Neither such Guarantor nor any of the other parties to this Agreement and each other Contract such Guarantor is party to (with respect to the Magnetation Contracts, to the Issuer's actual knowledge) is in default in the performance or observance of any of the terms thereof in any manner that, in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(e) The right, title and interest of such Guarantor in, to and under this Agreement and each other Contract such Guarantor is party to (with respect to the Magnetation Contracts, to the Issuer's actual knowledge) are not subject to any defenses, offsets, counterclaims or claims that, in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(f) Such Guarantor has delivered to the Trustee and Collateral Agent a complete and correct copy of this Agreement and each other Contract such Guarantor is party to (with respect to the Magnetation Contracts, to the Issuer's actual knowledge), including all amendments, supplements and other modifications thereto.

(g) No amount payable to such Guarantor under or in connection with this Agreement and each other Contract such Guarantor is party to (with respect to the Magnetation Contracts, to the Issuer's actual knowledge) is evidenced by any Instrument or Chattel Paper which has not been delivered to the Trustee and Collateral Agent.

(h) None of the parties to this Agreement and each other Contract such Guarantor is party to (with respect to the Magnetation Contracts, to the Issuer's actual knowledge) is a Governmental Authority.

4.4 Litigation. There is no action, suit, investigation or proceeding pending against, or to the knowledge of such Guarantor, threatened against or affecting, such Guarantor before any arbitrator or any Governmental Authority which in any manner challenges or seeks to prevent, enjoin, alter or materially delay the transactions contemplated by this Agreement.

4.5 Inspections; No Other Representations. Such Guarantor is an informed and sophisticated person or has engaged expert advisors, experienced in the evaluation of the Transaction and the guarantee provided hereunder. Such Guarantor has undertaken such investigation and has been provided with and has evaluated such documents and information as it has deemed necessary to enable it to make an informed and intelligent decision with respect to the execution, delivery and performance of this Agreement. Such Guarantor shall undertake such further investigation and request such additional documents and information as it deems necessary.

4.6 Solvency. Each of the Guarantors is Solvent. As used herein, the term "Solvent" means, with respect to any Person on a particular date, that on such date (i) the fair market value of the assets of such Person is greater than the total amount of liabilities (including contingent liabilities) of such Person, (ii) the present fair salable value of the assets of such Person is greater than the amount that will be required to pay the probable liabilities of such Person on its debts as they become absolute and matured, (iii) such Person is able to realize upon its assets and pay its debts and other liabilities, including contingent obligations, as they mature and (iv) such Person does not have unreasonably small capital.

4.7 No Existing Event of Default. No event of default exists under any contract, indenture, mortgage, loan agreement, note, lease or other agreement or instrument constituting Indebtedness.

SECTION 5. COVENANTS

Each Guarantor covenants and agrees with the Trustee and the Holders that, from and after the date of this Agreement until (x) the payment in full of the principal of, accrued and unpaid interest and premium, if any, on the Notes at the stated maturity or upon redemption pursuant to Article 3 of the Indenture, (y) the Indenture has been satisfied and discharged in accordance with Article 12 of the Indenture, or (z) as to the Limited Guarantor, the payment in full of the Obligations of the Limited Guarantor pursuant to Section 2.2(b) hereof:

5.1 Changes in Name, etc. Such Guarantor shall not, except upon 15 days' prior written notice to the Trustee and the Collateral Agent, (i) change his or her principal residence from that referred to in Section 4.1 or (ii) change his or her name.

5.2 Contracts. Such Guarantor shall perform and comply in all material respects with all its obligations under this Agreement and each other Contract such Guarantor is party to, subject to any available claims, rights or defenses thereunder.

5.3 Taxes. Such Guarantor shall pay all taxes, assessments and governmental levies except (a) such as are being contested in good faith and by appropriate documentation, negotiations or proceedings or (b) where the failure to effect such payment is not adverse in any material respect to the Trustee, Collateral Agent or the Holders.

5.4 Further Assurances. Such Guarantor shall execute any and all further documents, financing statements, agreements and instruments, and take all further actions that may be required under applicable law, or that the Trustee or Collateral Agent may reasonably request, to facilitate, and to avoid conflict with, the transactions set forth in the Indenture and other Notes Documents, and Asset Purchase Agreement and the Transaction Documents, and the guarantee hereunder.

5.5 Financial Statements.

The Unlimited Guarantor shall deliver, on an annual basis or as reasonably requested more frequently than annually by the Trustee acting on behalf of the Holders of the Notes, financial statements and other assurances of such Guarantor's ability to satisfy such Guarantor's Guarantor Obligations and any other obligations existing under this Agreement.

5.6 Stay, Extension and Usury Laws. Each of the Guarantors covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Agreement or any provisions of the Indenture incorporated by reference herein; and each of the Guarantors (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenant that it shall not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but shall suffer and permit the execution of every such power as though no such law has been enacted.

5.7 Notices.

Such Guarantor shall advise the Trustee and the Holders of the Notes promptly, in reasonable detail, of the occurrence of (i) any event which could reasonably be expected to have a Material Adverse Effect on the Issuer or the guarantee hereunder or (ii) any event that is an Event of Default under the Indenture, subject expressly to Section 6 herein.

SECTION 6. REMEDIAL PROVISIONS

6.1 Guarantee Shares. If an Event of Default shall occur and be continuing, (i) the Trustee shall have the right, subject to Section 6.02(b) of the Indenture and the passage of time and other asset liquidation activity described therein, to receive payment in respect of the Guaranteed Obligations (x) in the case of the Unlimited Guarantor, without any limit as to contribution or liability other than as set forth in Section 2.2(a); and (y) in the case of the Limited Guarantor, with limited liability and/or contribution as set forth in Sections 2.2(a) and (b).

6.2 Application of Proceeds. The Trustee, Collateral Agent or Paying Agent, as applicable, shall apply all or any part of proceeds of the guarantee set forth in Section 2 in payment of the Obligations pursuant to Section 6.13 of the Indenture.

6.3 Events of Default under the Indenture. Each Guarantor agrees that the provisions of Article 6 of the Indenture as they apply to Guarantors under the Indenture apply to each Guarantor under this Agreement, mutatis mutandis. For the avoidance of doubt, each of the Events of Default in Section 6.01(a)(3), (4), (6), (7), (10), and (13) of the Indenture are incorporated by reference herein and apply equally to each of the Guarantors under this Agreement, mutatis mutandis, and any Event of Default herein as it relates to a Guarantor hereunder shall be deemed an Event of Default under the Indenture and subject to the limitations on enforcement of rights against the Guarantors set forth in Section 6.02 of the Indenture.

6.4 Subordination. Each Guarantor hereby agrees that, upon the occurrence and during the continuance of an Event of Default, unless otherwise agreed by the Trustee and Collateral Agent, all Indebtedness owing by it to any Subsidiary of the Issuer shall be fully subordinated to the indefeasible payment in full in cash of such Guarantor's Obligations.

SECTION 7. THE TRUSTEE

7.1 The Appointment of the Trustee and Collateral Agent as Attorneys-in-Fact, etc.

(a) Each Guarantor hereby irrevocably constitutes and appoints the Trustee and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Guarantor and in the name of such Guarantor or in its own name, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement.

Anything in this Section 7.1(a) to the contrary notwithstanding, the Trustee agrees that it will not exercise any rights under the power of attorney provided for in this Section 7.1(a) unless (x) the Specified Event of Default has occurred and is continuing or (y) any Deficiency Amount remains outstanding following the Third Standstill Expiration Date.

(b) If any Guarantor fails to perform or comply with any of its agreements contained herein, the Trustee, at its option, but without any obligation so to do, may perform or comply, or otherwise cause performance or compliance, with such agreement.

(c) The expenses of the Trustee incurred in connection with actions undertaken as provided in this Section 7.1, together with interest thereon at a rate per annum equal to the highest rate per annum at which interest would then be payable on the Notes, from the date of payment by the Trustee to the date reimbursed by the relevant Guarantor, shall be payable by such Guarantor to the Trustee on demand.

(d) Each Guarantor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. All powers, authorizations and agencies contained in this Agreement are coupled with an interest and are irrevocable until this Agreement is terminated and the security interests created hereby are released.

7.2 Authority of the Trustee. Each Guarantor acknowledges that the rights and responsibilities of the Trustee under this Agreement or the Indenture with respect to any action taken by the Trustee or the exercise or non-exercise by the Trustee of any option, voting right,

request, judgment or other right or remedy provided for herein or the Indenture or resulting or arising out of this Agreement or the Indenture shall, as between the Trustee and the Holders, be governed by the Indenture and by such other agreements with respect thereto as may exist from time to time among them, but, as between the Trustee and the Guarantors, the Trustee shall be conclusively presumed to be acting as agent for the Holders with full and valid authority so to act or refrain from acting, and no Guarantor shall be under any obligation, or entitlement, to make any inquiry respecting such authority.

7.3 Trustee May File Proofs of Claim. The Trustee may file proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, their agents and counsel) and the Holders of the Notes allowed in any judicial proceedings relative to the Issuer (or any other obligor upon the Notes, including the Guarantors), its creditors or its property and is entitled and empowered to participate as a member in any official committee of creditors appointed in such matter and to collect, receive and distribute any money or other property payable or deliverable on any such claims. Any custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee and its agents and counsel, and any other amounts due the Trustee as provided in Section 7.07 of the Indenture. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee as provided in Section 7.07 of the Indenture out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

7.4 Other. Each Guarantor agrees that the provisions of Article 7 of the Indenture applicable to any Guarantor thereunder shall apply to such Guarantor under this Agreement, *mutatis mutandis*.

SECTION 8. MISCELLANEOUS

8.1 Amendments in Writing. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except in accordance with Article 9 of the Indenture.

8.2 Notices. All notices, requests and demands to or upon the Trustee or any Guarantor hereunder shall be effected in the manner provided for in Section 13.02 of the Indenture; *provided* that any such notice, request or demand to or upon any Guarantor shall be addressed to such Guarantor at its notice address set forth on Schedule 1.

8.3 No Waiver by Course of Conduct; Cumulative Remedies. Neither the Trustee nor any Holder shall by any act (except by a written instrument pursuant to Section 8.1), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or Event of Default. No failure to exercise, nor any delay in exercising, on the part of the Trustee or any Holder, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by the Trustee or any Holder of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which the Trustee or any Holder would otherwise have on any future occasion. The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any other rights or remedies provided by law.

8.4 Enforcement Expenses; Indemnification. (a) Each Guarantor agrees to pay or reimburse each Holder and the Trustee for all its reasonable costs and expenses incurred in collecting against such Guarantor under the guarantee contained in Section 2 or otherwise enforcing or preserving any rights under this Agreement and the other Notes Documents to which such Guarantor is a party, including, without limitation, the reasonable fees and disbursements of counsel (including the allocated fees and expenses of in-house counsel) to each Holder and of counsel to the Trustee.

(b) Each Guarantor agrees to pay, and to save the Trustee and the Holders harmless from, any and all liabilities with respect to, or resulting from any delay in paying, any and all stamp, excise, sales or other taxes which may be payable or determined to be payable in connection with any of the transactions contemplated by this Agreement.

(c) Each Guarantor agrees to pay, and to save the Trustee and the Holders harmless from, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance and administration of this Agreement to the extent the Issuer would be required to do so pursuant to Section 7.07 of the Indenture.

(d) The agreements in this Section 8.4 shall survive repayment of the Obligations and all other amounts payable under the Indenture and the other Notes Documents.

8.5 Successors and Assigns. This Agreement shall be binding upon the successors and assigns of each Guarantor and shall inure to the benefit of the applicable Beneficiary Parties and their successors and assigns; *provided* that no Guarantor may assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the Trustee.

8.6 Calculations. The Guarantors hereto acknowledge that all calculations of the Calculation Agent, in the absence of manifest error, shall be conclusive for all purposes and binding and neither the Trustee nor the Paying Agent shall have the duty to verify determinations of interest rates made by the Calculation Agent.

8.7 Counterparts. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by email or telecopy), and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

8.8 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

8.9 Section Headings. The Section headings used in this Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

8.10 Integration. This Agreement and the other Notes Documents represent the agreement of the Guarantors and the applicable Beneficiary Parties with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by the Trustee or any Holder relative to subject matter hereof and thereof not expressly set forth or referred to herein or in the other Notes Documents.

8.11 **GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.**

8.12 Submission To Jurisdiction; Waivers. Each Guarantor hereby irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to this Agreement, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of any state or federal court sitting in the Borough of Manhattan in the City of New York, and appellate courts from any thereof;

(b) consents that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such Guarantor at its address referred to in Section 8.2 or at such other address of which the Trustee shall have been notified pursuant thereto;

(d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction; and

(e) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Section any special, exemplary, punitive or consequential damages.

8.13 Acknowledgements. Each Guarantor hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Notes Documents to which it is a party (if any);

(b) neither the Trustee nor any Holder has any fiduciary relationship with or duty to any Guarantor arising out of or in connection with this Agreement or any of the other Notes Documents, and the relationship between the Guarantors, on the one hand, and the Trustee and Holders, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the other Notes Documents or otherwise exists by virtue of the transactions contemplated hereby among the Holders or among the Guarantors and the Holders.

8.14 U.S.A. PATRIOT Act. The parties hereto acknowledge that in accordance with Section 326 of the U.S.A. PATRIOT Act, the Trustee is required to obtain, verify, and record information that identifies each Person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Agreement agree that they shall provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the U.S.A. PATRIOT Act.

8.15 **WAIVER OF JURY TRIAL.** EACH OF THE GUARANTORS, THE TRUSTEE AND COLLATERAL AGENT HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE INDENTURE, THE NOTES, THE OTHER NOTES DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY.

8.16 Effectiveness of Guarantee Agreement.

No party shall have any rights, obligations or other benefits or responsibilities hereunder unless and until such time as the parties have issued the Notes hereunder in connection with the Closing (as defined in the APA), and the Closing has occurred; provided that the Trustee shall be entitled to an Officers' Certificate and Opinion of Counsel that such closing has occurred and that all conditions precedent have been satisfied.

[*Signatures on following page*]

IN WITNESS WHEREOF, each of the undersigned has caused this Guarantee Agreement to be duly executed and delivered as of the date first above written.

ERP IRON ORE, LLC

By

By: _____
Name:
Title:

ERP COMPLIANT COKE, LLC

By

By: _____
Name:
Title:

THOMAS MATTHEW CLARKE, as Unlimited Guarantor

By: _____
Name: Thomas Matthew Clarke

ANA MERCEDES CLARKE, as Limited Guarantor

By: _____
Name: Ana Mercedes Clarke

WILMINGTON SAVINGS FUND SOCIETY, FSB
as Trustee

By: _____
Name:
Title:

Schedule 1

NOTICE ADDRESSES OF GUARANTORS

For all Guarantors:

c/o ERP Compliant Fuels, LLC
15 Appledore Lane
Natural Bridge, Virginia 24578
Attention: Tom Clarke
Email: Tom.Clarke@kissito.org

Schedule 2

DESCRIPTION OF GUARANTEE SHARES

Guarantee Shares:

Guarantee Shares Issuer	Percentage ownership
Seneca Coal Resources, LLC	38.5%
Seminole Coal Resources, LLC	38.5%
Conuma Coal Resources Limited	38.5%[2]

[2] The Limited Guarantor owns, indirectly, 38.5% of Conuma Coal Resources Limited, which is directly owned 100.0% by ERP Coal Resources Limited through its holding of 1,000,000 Class A Voting common shares in Conuma Coal Resources Limited, evidenced by the share certificate labeled "3AC".

Schedule 3

LOCATION OF JURISDICTION OF PRIMARY RESIDENCE

Guarantor	Location of Primary Residence
Tom Clarke	Commonwealth of Virginia
Ana Clarke	Commonwealth of Virginia

EXHIBIT J

Form of ERP Assumption

Execution Version

Form of ERP Assumption

THIS ASSIGNMENT, ASSUMPTION AND NOVATION AGREEMENT, dated as of [●], 2016 (this "**Agreement**"), is made and entered into by and among MG Initial Purchaser, LLC, a Delaware limited liability company ("**Initial Buyer**"), ERP Iron Ore, LLC, a Virginia limited liability company ("**ERP Iron Ore**"), Magnetation LLC, a Delaware limited liability company (the "**Company**"), and the Subsidiaries of the Company set forth on Schedule A of the Asset Purchase Agreement (together with the Company, the "**Sellers**"). The Sellers, the ERP Iron Ore, and Initial Buyer are referred to herein individually as a "**Party**" and collectively as the "**Parties**".

WHEREAS, Initial Buyer, ERP Iron Ore and the Sellers are parties to that certain Asset Purchase Agreement dated December 6, 2016 by and among Initial Buyer, ERP Iron Ore and the Sellers, (the "**Asset Purchase Agreement**");

WHEREAS, pursuant to the Sale Order and Section 2.11 of the Asset Purchase Agreement, the Parties wish to effect the assignment by Initial Buyer to ERP Iron Ore, and the assumption by ERP Iron Ore, of certain of Initial Buyer's rights and obligations under the Asset Purchase Agreement, and ERP Iron Ore wishes to evidence its intent to be bound by the provisions of the Asset Purchase Agreement as more fully set forth herein; and

WHEREAS, pursuant to the Sale Order and Section 2.11 of the Asset Purchase Agreement, the Parties wish to effect the novation of Initial Buyer's obligations and Liabilities pursuant to the Asset Purchase Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1) Definitions.

   "**Liabilities**" means all existing or future liabilities, debts, obligations, assessments, duties, or adverse claims of every type and trade, whether matured or unmatured, fixed or contingent, absolute or contingent, known or unknown, accrued or unaccrued, liquidated or unliquidated, direct or indirect, or otherwise.

   Terms used but not otherwise defined herein shall have the meanings ascribed thereto in the Asset Purchase Agreement.

2) Assignment and Assumption. Initial Buyer hereby irrevocably sells, conveys, assigns, transfers and sets over unto ERP Iron Ore all of Initial Buyer's present and future right, title and interest in and to the Asset Purchase Agreement, and hereby delegates to ERP Iron Ore all of its performance obligations under the Asset Purchase Agreement from and after the date hereof (and for the avoidance of doubt, other than any Liability arising out of or related to any breach, default (whether monetary or non-monetary), act or omission that occurred on or prior to the date of this Agreement; provided that ERP Iron Ore shall undertake the performance obligations of Initial Buyer under the Asset Purchase Agreement commenced prior to the date of this Agreement that do not concern a Liability

arising out of or relating to a breach or default under the Asset Purchase Agreement) (collectively, the "**Assignment**"). ERP Iron Ore hereby accepts the Assignment from Initial Buyer and hereby assumes, undertakes, and agrees to perform and discharge all of such performance obligations of Buyer under the Asset Purchase Agreement from and after the date hereof (and for the avoidance of doubt, other than any Liability arising out of or related to any breach, default (whether monetary or non-monetary), act or omission that occurred on or prior to the date of this Agreement; provided that ERP Iron Ore shall undertake the performance obligations of Initial Buyer under the Asset Purchase Agreement commenced prior to the date of this Agreement that do not concern a Liability arising out of or relating to a breach or default under the Asset Purchase Agreement) (the "**Assumption**"). ERP Iron Ore hereby confirms that by this Agreement it shall be regarded as the "Buyer" for all purposes of the Asset Purchase Agreement first arising from and after the date hereof. Notwithstanding the foregoing, nothing in this Agreement shall affect (a) Initial Buyer's obligations under Section 6.03, or the limitations on exercise of Initial Buyer's rights under Section 11.01(i), of the Asset Purchase Agreement or the obligations to instruct the DIP Agent to deliver the DIP Credit Release at Closing as contemplated by Section 2.07 and Section 2.10(d) of the Asset Purchase Agreement or (b) Initial Buyer's rights under Article 10 or Article 11 of the Asset Purchase Agreement. Moreover, notwithstanding anything in this Agreement, ERP Iron Ore shall have no Liability for any act or omission of Initial Buyer prior to the date hereof other than with respect to any breach of ERP Iron Ore's obligations under Section 2.11(d)(y) of the Asset Purchase Agreement.

3) Novation; Consent. Sellers hereby acknowledge and consent to the Assignment and Assumption under this Agreement and agree that from and after the date first set forth above, Initial Buyer and its Affiliates are hereby released, novated and discharged from all Liabilities, covenants, undertakings, obligations and duties under the Asset Purchase Agreement (provided, that nothing in this Agreement shall affect (a) Initial Buyer's obligations under Section 6.03, or the limitations on exercise of Initial Buyer's rights under Section 11.01(i), of the Asset Purchase Agreement or the obligations to instruct the DIP Agent to deliver the DIP Credit Release at Closing as contemplated by Section 2.07 and Section 2.10(d) and (e) of the Asset Purchase Agreement or (b) Initial Buyer's rights under Article 10 or Article 11 of the Asset Purchase Agreement) and Sellers shall look only to ERP Iron Ore for the performance of obligations of Buyer under the Asset Purchase Agreement from and after the date hereof (and for the avoidance of doubt, other than any Liability arising out of or related to any breach, default (whether monetary or non-monetary), act or omission that occurred on or prior to the date of this Agreement; provided that ERP Iron Ore shall undertake the performance obligations of Initial Buyer under the Asset Purchase Agreement commenced prior to the date of this Agreement that do not concern a Liability arising out of or relating to a breach or default under the Asset Purchase Agreement). Sellers further agree that they shall discharge all of their respective obligations and duties to Buyer under the Asset Purchase Agreement for the benefit of ERP Iron Ore. Upon this novation, all references to Buyer contained in the Asset Purchase Agreement, and any documents delivered under or pursuant thereto, are hereby construed, respectively, as references to ERP Iron Ore for all purposes first arising from and after the date hereof. Sellers hereby confirm that by this Agreement, ERP Iron

Ore shall be regarded as the "Buyer" under the Asset Purchase Agreement from and after the date hereof.

4) Representations and Warranties.

a. Each Party hereto represents and warrants to the other Parties that this Agreement shall constitute the valid and binding obligation of the representing and warranting Party enforceable against it in accordance with its terms.

b. Initial Buyer hereby makes to ERP Iron Ore all representations and warranties Initial Buyer makes to the "Sellers" under the Asset Purchase Agreement, *mutatis mutandis*.

c. ERP Iron Ore hereby makes to Initial Buyer all representations and warranties ERP Iron Ore makes to the "Sellers" under the Asset Purchase Agreement as of the date hereof, *mutatis mutandis*.

d. Each of the Parties represents and warrants that it is not in material breach or default of any terms or conditions of the Asset Purchase Agreement.

e. ERP Iron Ore hereby makes to Sellers the representations and warranties of "Buyer" in Article 4 of the Asset Purchase Agreement, *mutatis mutandis*.

f. Initial Buyer certifies to Sellers and ERP Iron Ore that, as of the date hereof:

(i) Initial Buyer has performed or complied with, in each case, in all material respects, all of its obligations under the Asset Purchase Agreement required to be performed by it on or prior to the date hereof;

(ii) Each of the representations and warranties of Initial Buyer contained in the Asset Purchase Agreement (without giving effect to any qualification as to materiality, material adverse effect or words of similar import included therein), other than Fundamental Representations of Initial Buyer, is true and correct in all respects on and as of the Effective Date and on and as of the date hereof, as if made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects), except where the failure to be so true and correct (without giving effect to any qualifications as to materiality, material adverse effect or words of similar import included therein) would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on Initial Buyer's or ERP Iron Ore's ability to consummate the transactions contemplated by the Asset Purchase Agreement, after giving effect to the Sale Order;

(iii) Each of the Fundamental Representations of Initial Buyer contained in the Asset Purchase Agreement is true and correct in all respects on and as of the Effective Date and on and as of the date hereof, as if made at and as of such date.

5) Conflict. The Assignment, Assumption and novation (and the obligations thereunder) made hereunder are made in accordance with and subject to the Asset Purchase Agreement (including, without limitation, the representations, warranties, covenants, and agreements contained therein), which is incorporated herein by reference. In the event of a conflict between the terms and conditions of this Agreement and the terms and conditions of the Asset Purchase Agreement, the terms and conditions of the Asset Purchase Agreement shall govern, supersede, and prevail. Except as expressly set forth in this Agreement, nothing herein is intended to, nor shall it, extend, amplify, or otherwise alter the representations, warranties, covenants, and obligations of the Parties contained in the Asset Purchase Agreement or the survival thereof.

6) Notices. Any notice, request, or other document to be given hereunder to any Party shall be given in the manner specified in Section 12.01 of the Asset Purchase Agreement. Any Party may change its address for receiving notices, requests, and other documents by giving written notice of such change to the other Parties in the manner specified in Section 12.01 of the Asset Purchase Agreement.

7) Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under Applicable Law, but if any provision of this Agreement is held to be prohibited by or invalid under Applicable Law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Agreement.

8) Enforceability. If any provision of this Agreement or the application of any such provision to any Person or circumstance shall be held invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other provision hereof.

9) Amendments. This Agreement may not be amended or modified except by an instrument in writing signed by, or on behalf of, the Parties.

10) Further Assurances. Each of the Parties, without additional consideration, shall execute and deliver all such further documents and do such other things as the other Parties may reasonably request to give full effect to this Agreement.

11) Counterparts; Facsimile and Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. This Agreement or any counterpart may be executed and delivered by facsimile copies or delivered by electronic communications by portable document format (.pdf), each of which shall be deemed an original.

12) Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York (without giving effect to the principles of conflicts of laws thereof), except to the extent that the laws of such state are superseded by the Bankruptcy Code.

13) Third Party Beneficiaries and Obligations. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to or shall confer upon any Person other than the Parties or their respective successors and permitted assigns, any rights, remedies, or liabilities under or by reason of this Agreement.

14) Entire Agreement. This Agreement and the Asset Purchase Agreement and the Sale Order and the exhibits and the documents referred to in the Asset Purchase Agreement and the Sale Order, contain the entire understanding between the Parties with respect to the transactions contemplated hereby and supersede all prior agreements, understandings, representations, and statements, oral or written, among the Parties on the subject matter hereof, which such prior agreements, understandings, representations, and statements, oral or written, shall be of no further force or effect.

[*signature pages to follow*]

SCHEDULE A

Subsidiaries

Company	State of Organization
Mag Lands, LLC	Delaware
Mag Finance Corp.	Delaware
Mag Mining, LLC	Delaware
Mag Pellet, LLC	Indiana

EXHIBIT B

Assigned Contracts and Cure Costs

EXHIBIT C

Liens And Security Interests That Purchased Assets Are Sold Free and Clear Of

MAGNETATION LIENS

1. A UCC financing statement given as additional security

   Debtor : Mag Lands, LLC
   Secured Party : JP Morgan Chase Bank, N.A
   Dated : October 19, 2016
   Recorded : May 20, 2013 Initial Filing # 2013 1931790 (State of Delaware)

2. A UCC financing statement given as additional security

   Debtor : Mag Lands, LLC
   Secured Party : Wells Fargo Bank, National Association
   Dated : October 19, 2016
   Recorded : May 20, 2013 Initial Filing # 2013 1932129 (State of Delaware)

3. A UCC financing statement given as additional security

   Debtor : Mag Lands, LLC
   Secured Party : Wells Fargo Bank, National Association
   Dated : October 19, 2016
   Recorded : April 20, 2015 Initial Filing # 2013 1932129
   2013 1670271 - Amendment (State of Delaware)

4. A UCC financing statement given as additional security

   Debtor : Mag Lands, LLC
   Secured Party : Wilmington Trust, National Association
   Dated : October 19, 2016
   Recorded : April 17, 2015 Initial Filing # 2015 1654101 (State of Delaware)

5. A UCC financing statement given as additional security

   Debtor : Mag Lands, LLC
   Secured Party : Wilmington Trust, National Association
   Dated : October 19, 2016
   Recorded : May 11, 2015 Initial Filing # 2015 2008059 (State of Delaware)

6. A UCC financing statement given as additional security

   Debtor : Magnetation LLC and Mag Lands, LLC
   Secured Party : JP Morgan Chase Bank, N.A
   Dated : October 25, 2015
   Recorded : June 27, 2013 Initial Filing # A00067690 (Itasca County, Minnesota)

7. A UCC financing statement given as additional security

   Debtor : Magnetation LLC and Mag Lands, LLC
   Secured Party : Wells Fargo Bank, National Association
   Dated : October 25, 2015
   Recorded : June 27, 2013 Initial Filing # A00067692 (Itasca County, Minnesota)

8. A UCC financing statement given as additional security

   Debtor : Magnetation and Mag Lands, LLC
   Secured Party : Wells Fargo Bank, National Association

Dated : October 25, 2015
Recorded : June 27, 2013 Initial Filing # A00067692 (Itasca County, Minnesota)

9. A UCC financing statement given as additional security

Debtor : Magnetation LLC and Mag Lands, LLC
Secured Party : JP Morgan Chase Bank, N.A
Book : 72
Page : 37-38
Dated : October 25, 2015
Recorded : June 28, 2013 Initial Filing # T00058962 (Itasca County, Minnesota)

10. A UCC financing statement given as additional security

Debtor : Magnetation LLC and Mag Lands, LLC
Secured Party : Wells Fargo Bank, National Association
Book : 72
Page : 37-38
Dated : October 25, 2015
Recorded : June 28, 2013 Initial Filing # T00058964 (Itasca County, Minnesota)

11. financing statement given as additional security

Debtor : Magnetation LLC and Mag Lands, LLC
Secured Party : Wilmington Trust, National Association
Dated : October 25, 2015
Recorded : April 20, 2015 Initial Filing # A000622970 (Itasca County, Minnesota)

12. financing statement given as additional security

Debtor : Magnetation and Mag Lands, LLC
Secured Party : Wilmington Trust, National Association
Book : 75
Page : 121-122
Dated : October 25, 2015
Recorded : April 23, 2015 Initial Filing # T000060974 (Itasca County, Minnesota)

13. A UCC financing statement given as additional security

Debtor : Mag Lands, LLC
Secured Party : Wells Fargo Bank, National Association
Dated : October 19, 2016
Recorded : April 23, 2015 Initial Filing # A000693108 (Itasca County, Minnesota)

14. A UCC financing statement given as additional security

Debtor : Mag Lands, LLC
Secured Party : Wells Fargo Bank, National Association
Dated : October 19, 2016
Recorded : April 23, 2015 Initial Filing # T000060976 (Itasca County, Minnesota)

15. A UCC financing statement given as additional security

Debtor : Mag Finance Corp
Secured Party : JP Morgan Chase Bank, N.A
Dated : October 19, 2016

Recorded : May 20, 2013 Initial Filing # 2013 1931642 (State of Delaware)

16. A UCC financing statement given as additional security

Debtor : Mag Finance Corp
Dated : October 25, 2016
Secured Party : Wells Fargo Bank, National Association
Recorded : May 20, 2013 Initial Filing # 2013 1932004 (State of Delaware)

17. A UCC financing statement given as additional security

Debtor : Mag Finance Corp
Secured Party : Wells Fargo Bank, National Association
Dated : October 25, 2016
Recorded : April 23, 2015 Initial Filing # 2013 1932004
Amendment # 2015 1670206 (State of Delaware)

18. A UCC financing statement given as additional security

Debtor : Mag Finance Corp
Secured Party : Wilmington Trust National Association
Dated : October 25, 2016
Recorded : April 17, 2015 Initial Filing # 2015 1654051 (State of Delaware)

19. A UCC financing statement given as additional security

Debtor : Mag Finance Corp
Secured Party : Wilmington Trust National Association
Dated : October 25, 2016
Recorded : May 11, 2015 Initial Filing # 2015 2007960 (State of Delaware)

20. A UCC financing statement given as additional security

Debtor : Mag Mining, LLC
Secured Party : JP Morgan Chase Bank, N.A
Dated : October 25, 2016
Recorded : May 20, 2013 Initial Filing # 2013 193132 (State of Delaware)

21. A UCC financing statement given as additional security

Debtor : Mag Mining, LLC
Secured Party : Wells Fargo Bank, National Association
Dated : October 25, 2016
Recorded : May 20, 2013 Initial Filing # 2013 1932251 (State of Delaware)

22. A UCC financing statement given as additional security

Debtor : Mag Mining, LLC
Secured Party : Wells Fargo Bank, National Association
Dated : October 25, 2016
Recorded : April 20, 2015 Initial Filing # 2013 1932251
Amendment # 2015 1670461 (State of Delaware)

23. A UCC financing statement given as additional security

Debtor : Mag Mining, LLC
Secured Party : VFS Leasing Co.
Dated : October 25, 2016
Recorded : July 23, 2014 Initial Filing # 2014 2928521 (State of Delaware)

24. A UCC financing statement given as additional security

Debtor : Mag Mining, LLC
Secured Party : Caterpillar Financial Services Corporation
Dated : October 25, 2016
Recorded : July 28, 2014 Initial Filing # 2014 2986651 (State of Delaware)

25. A UCC financing statement given as additional security

Debtor : Mag Mining, LLC
Secured Party : Caterpillar Financial Services Corporation
Dated : October 25, 2016
Recorded : July 28, 2014 Initial Filing # 2014 2986883 (State of Delaware)

26. A UCC financing statement given as additional security

Debtor : Mag Mining, LLC
Secured Party : VFS Leasing Co.
Dated : October 25, 2016
Recorded : August 29, 2014 Initial Filing # 2014 3476504 (State of Delaware)

27. A UCC financing statement given as additional security

Debtor : Mag Mining, LLC
Secured Party : Caterpillar Financial Services Corporation
Dated : October 25, 2016
Recorded : September 3, 2014 Initial Filing # 2014 3523370 (State of Delaware)

28. A UCC financing statement given as additional security

Debtor : Mag Mining, LLC
Secured Party : Caterpillar Financial Services Corporation
Dated : October 25, 2016
Recorded : September 10, 2014 Initial Filing # 2014 3610227 (State of Delaware)

29. A UCC financing statement given as additional security

Debtor : Mag Mining, LLC
Secured Party : Caterpillar Financial Services Corporation
Dated : October 25, 2016
Recorded : November 11, 2014 Initial Filing # 2014 3610227
Amendment # 2014 4538708 (State of Delaware)

30. A UCC financing statement given as additional security

Debtor : Mag Mining, LLC
Secured Party : VFS Leasing Co
Dated : October 25, 2016
Recorded : September 24, 2014 Initial Filing # 2014 3811809 (State of Delaware)

31. A UCC financing statement given as additional security

Debtor : Mag Mining, LLC
Secured Party : Caterpillar Financial Services Corporation
Dated : October 25, 2016
Recorded : October 6 ,2014 Initial Filing # 2014 4001103 (State of Delaware)

32. A UCC financing statement given as additional security

Debtor : Mag Mining, LLC
Secured Party : Caterpillar Financial Services Corporation
Dated : October 25, 2016
Recorded : October 6, 2014 Initial Filing # 2014 4001129 (State of Delaware)

33. A UCC financing statement given as additional security

Debtor : Mag Mining, LLC
Secured Party : VFS Leasing Co
Dated : October 25, 2016
Recorded : October 28, 2014 Initial Filing # 2014 4327300 (State of Delaware)

34. A UCC financing statement given as additional security

Debtor : Mag Mining, LLC
Secured Party : Komatsu Financial Limited Partnership
Dated : October 25, 2016
Recorded : November 3, 2014 Initial Filing # 2014 4408803 (State of Delaware)

35. A UCC financing statement given as additional security

Debtor : Mag Mining, LLC
Secured Party : Komatsu Financial Limited Partnership
Dated : October 25, 2016
Recorded : November 3, 2014 Initial Filing # 2014 4408811 (State of Delaware)

36. A UCC financing statement given as additional security

Debtor : Mag Mining, LLC
Secured Party : Komatsu Financial Limited Partnership
Dated : October 25, 2016
Recorded : November 3, 2014 Initial Filing # 2014 4410304 (State of Delaware)

37. A UCC financing statement given as additional security

Debtor : Mag Mining, LLC
Secured Party : Komatsu Financial Limited Partnership
Dated : October 25, 2016
Recorded : November 3, 2014 Initial Filing # 2014 4410312 (State of Delaware)

38. A UCC financing statement given as additional security

Debtor : Mag Mining, LLC
Secured Party : VFS Leasing Co
Dated : October 25, 2016
Recorded : November 12, 2014 Initial Filing # 2014 4548582 (State of Delaware)

39. A UCC financing statement given as additional security

Debtor : Mag Mining, LLC
Secured Party : Caterpillar Financial Services Corporation
Dated : October 25, 2016
Recorded : November 13, 2014 Initial Filing # 2014 4579686 (State of Delaware)

40. A UCC financing statement given as additional security

Debtor : Mag Mining, LLC
Secured Party : Caterpillar Financial Services Corporation
Dated : October 25, 2016
Recorded : November 13, 2014 Initial Filing # 2014 4579868 (State of Delaware)
SRV# : 141405402

41. A UCC financing statement given as additional security

Debtor : Mag Mining, LLC
Secured Party : Caterpillar Financial Services Corporation
Dated : October 25, 2016
Recorded : November 13, 2014 Initial Filing # 2014 4588968 (State of Delaware)
SRV# : 141407779

42. A UCC financing statement given as additional security

Debtor : Mag Mining, LLC
Secured Party : Caterpillar Financial Services Corporation
Dated : October 25, 2016
Recorded : December 16, 2014 Initial Filing # 2014 4588968 (State of Delaware)
Amendment # 2014 5095419 (State of Delaware)
SRV# : 141540774

43. A UCC financing statement given as additional security

Debtor : Mag Mining, LLC
Secured Party : General Electric Capital Corporation
Dated : October 25, 2016
Recorded : November 14, 2014 Initial Filing # 2014 4602496 (State of Delaware)

44. A UCC financing statement given as additional security

Debtor : Mag Mining, LLC
Secured Party : General Electric Capital Corporation
Dated : October 25, 2016
Recorded : January 13, 2016 Initial Filing # 2014 4602496 (State of Delaware)
Amendment # 2016 0246866 (State of Delaware)

45. A UCC financing statement given as additional security

Debtor : Mag Mining, LLC
Secured Party : Caterpillar Financial Services Corporation
Dated : October 25, 2016
Recorded : November 19, 2014 Initial Filing # 2014 4670022 (State of Delaware)

46. A UCC financing statement given as additional security

Debtor : Mag Mining, LLC
Secured Party : VFS US LLC and Assigns
Dated : October 25, 2016
Recorded : November 21, 2014 Initial Filing # 2014 4728267 (State of Delaware)

47. A UCC financing statement given as additional security

Debtor : Mag Mining, LLC
Secured Party : VFS US LLC and Assigns
Dated : October 25, 2016
Recorded : November 25, 2014 Initial Filing # 2014 4728267 (State of Delaware)
Amendment # 2016 4757415 (State of Delaware)

48. A UCC financing statement given as additional security

Debtor : Mag Mining, LLC
Secured Party : VFS Leasing Co.
Dated : October 25, 2016
Recorded : December 31, 2014 Initial Filing # 2014 5314067 (State of Delaware)

49. A UCC financing statement given as additional security

Debtor : Mag Mining, LLC
Secured Party : Caterpillar Financial Services Corporation
Dated : October 25, 2016
Recorded : February 9, 2015 Initial Filing # 2015 0560861 (State of Delaware)

50. A UCC financing statement given as additional security

Debtor : Mag Mining, LLC
Secured Party : Wells Fargo Bank, N.A.
Dated : October 25, 2016
Recorded : February 26, 2015 Initial Filing # 2015 0809227 (State of Delaware)

51. A UCC financing statement given as additional security

Debtor : Mag Mining, LLC
Secured Party : Wilmington Trust National Association
Dated : October 25, 2016
Recorded : March 17, 2015 Initial Filing # 2015 1654085 (State of Delaware)

52. A UCC financing statement given as additional security

Debtor : Mag Mining, LLC
Secured Party : Wilmington Trust National Association
Dated : October 25, 2016
Recorded : May 11, 2015 Initial Filing # 2015 2008000 (State of Delaware)

53. A UCC financing statement given as additional security

Debtor : Mag Mining, LLC
Secured Party : Applied Industrial Technologies Inc.
Dated : October 25, 2016
Recorded : June 7, 2016 Initial Filing # 2016 3402169 (State of Delaware)

54. A UCC financing statement given as additional security

Debtor : Magnetation LLC and Mag Mining, LLC
Secured Party : Range Electric, Inc.
Dated : October 25, 2016
Recorded : May 22, 2015 Initial Filing # 82765300078 (State of Minnesota)

55. A UCC financing statement given as additional security

Debtor : Magnetation LLC and Mag Mining, LLC
Secured Party : Range Electric, Inc.
Dated : October 25, 2016
Recorded : May 22, 2015 Initial Filing # 82765300078 (State of Minnesota)

56. A UCC financing statement given as additional security

Debtor : Mag Mining, LLC
Secured Party : Applied Industrial Technologies
Dated : October 25, 2016
Recorded : June 7, 2016 Initial Filing # 891123600023 (State of Minnesota)

57. A UCC financing statement given as additional security

Debtor : Mag Pellet LLC
Secured Party : Wilmington Trust National Association
Secured Party : Wells Fargo Bank, National Association
Dated : October 25, 2016
Recorded : May 21, 2013 Initial Filing # 2013 00004791865 (State of Minnesota)
: April 20, 2015 Amendment # 2015 00003010638 (State of Minnesota)

58. A UCC financing statement given as additional security

Debtor : Mag Pellet LLC
Secured Party : JPMorgan Chase Bank, N.A.
Dated : October 25, 2016
Recorded : May 21, 2013 Initial Filing # 2013 00004791976 (State of Minnesota)

59. A UCC financing statement given as additional security

Debtor : Mag Pellet LLC
Secured Party : General Electric Credit Corporation
Dated : October 25, 2016
Recorded : April 15, 2014 Initial Filing # 2014 00002947544 (State of Minnesota)

60. A UCC financing statement given as additional security

Debtor : Mag Pellet LLC
Secured Party : General Electric Credit Corporation
Dated : October 25, 2016
Recorded : April 15, 2014 Initial Filing # 2014 00002947877 (State of Minnesota)

61. A UCC financing statement given as additional security

Debtor : Mag Pellet LLC
Secured Party : Caterpillar Financial Services Corporation
Dated : October 25, 2016
Recorded : August 29, 2014 Initial Filing # 2014 00006910063 (State of Minnesota)

62. A UCC financing statement given as additional security

Debtor : Mag Pellet LLC
Secured Party : Caterpillar Financial Services Corporation
Dated : October 25, 2016
Recorded : August 29, 2014 Initial Filing # 2014 00006910063 (State of Minnesota)

63. A UCC financing statement given as additional security

Debtor : Mag Pellet LLC
Secured Party : Caterpillar Financial Services Corporation
Dated : October 25, 2016
Recorded : August 29, 2014 Initial Filing # 2014 00006910174 (State of Minnesota)

64. A UCC financing statement given as additional security

Debtor : Mag Pellet LLC
Secured Party : Caterpillar Financial Services Corporation
Dated : October 25, 2016
Recorded : September 26, 2014 Initial Filing # 2014 00007633218 (State of Minnesota)

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65. A UCC financing statement given as additional security

Debtor : Mag Pellet LLC
Secured Party : Caterpillar Financial Services Corporation
Dated : October 25, 2016
Recorded : January 28, 2015 Initial Filing # 2015 00000715869 (State of Minnesota)

66. A UCC financing statement given as additional security

Debtor : Mag Pellet LLC
Secured Party : Loeb Equipment & Appraisal Company
Dated : October 25, 2016
Recorded : February 02, 2015 Initial Filing # 2015 00000838209 (State of Minnesota)

67. A UCC financing statement given as additional security

Debtor : Mag Pellet LLC
Secured Party : Powerscreen Indiana, Inc.
Dated : October 25, 2016
Recorded : February 18, 2015 Initial Filing # 2015 00001263444 (State of Minnesota)

68. A UCC financing statement given as additional security

Debtor : Mag Pellet LLC
Secured Party : Wilmington Trust National Association
Dated : October 25, 2016
Recorded : April 17, 2015 Initial Filing # 2015 00002944613 (State of Minnesota)

69. A UCC financing statement given as additional security

Debtor : Mag Pellet LLC
Secured Party : Wilmington Trust National Association
Dated : October 25, 2016
Recorded : May 12, 2015 Initial Filing # 2015 00003687668 (State of Minnesota)

70. A UCC financing statement given as additional security

Debtor : Mag Pellet LLC
Secured Party : Applied Technologies Inc.
Dated : October 25, 2016
Recorded : May 17, 2016 Initial Filing # 2016 00003973102 (State of Minnesota)

71. A UCC financing statement given as additional security

Debtor : Mag Pellet LLC
Secured Party : Caterpillar Financial Services Corporation
Dated : October 25, 2016
Recorded : September 2, 2014 Initial Filing # 01409U0022 (White County, Indiana)

72. A UCC financing statement given as additional security

Debtor : Mag Pellet LLC
Secured Party : Caterpillar Financial Services Corporation
Dated : October 25, 2016
Recorded : September 2, 2014 Initial Filing # 01409U0021 (White County, Indiana)

73. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : JP Morgan Chase Bank, N.A
Dated : October 25, 2016
Recorded : March 1, 2012 Initial Filing # 2014 0807919 (State of Delaware)

74. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : JP Morgan Chase Bank, N.A
Dated : October 25, 2016
Recorded : July 7, 2012 Initial Filing # 2014 2619940 (State of Delaware)

75. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Caterpillar Financial Services Corporation
Dated : October 25, 2016
Recorded : April 17, 2015 Initial Filing # 2012 2619940
Amendment # 2015 1649010 (State of Delaware)

76. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Caterpillar Financial Services Corporation
Dated : October 25, 2016
Recorded : July 31, 2012 Initial Filing # 2012 2928515 (State of Delaware)

77. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Caterpillar Financial Services Corporation
Dated : October 25, 2016
Recorded : July 31, 2012 Initial Filing # 2012 2928523 (State of Delaware)

78. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Caterpillar Financial Services Corporation
Dated : October 25, 2016
Recorded : July 31, 2012 Initial Filing # 2012 2928531 (State of Delaware)

79. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Caterpillar Financial Services Corporation
Dated : October 25, 2016
Recorded : July 31, 2012 Initial Filing # 2012 2928549 (State of Delaware)

80. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Caterpillar Financial Services Corporation
Dated : October 25, 2016
Recorded : July 31, 2012 Initial Filing # 2012 2928556 (State of Delaware)

81. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Caterpillar Financial Services Corporation
Dated : October 25, 2016
Recorded : February 22, 2013 Initial Filing # 2012 0707233 (State of Delaware)

82. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : JP Morgan Chase Bank, N.A
Dated : October 25, 2016
Recorded : May 20, 2013 Initial Filing # 2013 0707233
Amendment # 2013 1925081 (State of Delaware)

83. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Caterpillar Financial Services Corporation
Dated : October 25, 2016
Recorded : March 20, 2013 Initial Filing # 2013 1068684 (State of Delaware)

84. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Caterpillar Financial Services Corporation
Dated : October 25, 2016
Recorded : March 20, 2013 Initial Filing # 2013 1068700 (State of Delaware)

85. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Caterpillar Financial Services Corporation
Dated : October 25, 2016
Recorded : March 20, 2013 Initial Filing # 2013 1068775 (State of Delaware)

86. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Caterpillar Financial Services Corporation
Dated : October 25, 2016
Recorded : March 20, 2013 Initial Filing # 2013 1068866 (State of Delaware)

87. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Caterpillar Financial Services Corporation
Dated : October 25, 2016
Recorded : March 20, 2013 Initial Filing # 2013 1068940 (State of Delaware)

88. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Caterpillar Financial Services Corporation
Dated : October 25, 2016
Recorded : March 20, 2013 Initial Filing # 2013 1068957 (State of Delaware)

89. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Caterpillar Financial Services Corporation
Dated : October 25, 2016
Recorded : March 20, 2013 Initial Filing # 2013 1068973 (State of Delaware)

90. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Caterpillar Financial Services Corporation
Dated : October 25, 2016
Recorded : March 20, 2013 Initial Filing # 2013 1069096 (State of Delaware)

91. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : JP Morgan Chase Bank, N.A
Dated : October 25, 2016
Recorded : May 20, 2013 Initial Filing # 2013 1931873 (State of Delaware)

92. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Wells Fargo Bank, National Association
Dated : October 25, 2016
Recorded : May 20, 2013 Initial Filing # 2013 1932293 (State of Delaware)

93. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Wells Fargo Bank, National Association
Dated : October 25, 2016
Recorded : April 20, 2015 Initial Filing # 2013 1932293
Amendment # 2015 1670396 (State of Delaware)

94. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Wesco Distribution, Inc.
Dated : October 25, 2016
Recorded : September 11, 2013 Initial Filing # 2013 3540557 (State of Delaware)

95. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : VFS Leasing Co..
Dated : October 25, 2016
Recorded : May 21, 2014 Initial Filing # 2014 2002863 (State of Delaware)

96. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : VFS Leasing Co.
Dated : October 25, 2016
Recorded : June 4, 2014 Initial Filing # 2014 2170231 (State of Delaware)

97. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Caterpillar Financial Services Corporation
Dated : October 25, 2016
Recorded : July 18, 2014 Initial Filing # 2014 2853588 (State of Delaware)

98. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Komatsu Financial Limited Partnership
Dated : October 25, 2016
Recorded : August 25, 2014 Initial Filing # 2014 3397320 (State of Delaware)

99. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Komatsu Financial Limited Partnership
Dated : October 25, 2016
Recorded : August 25, 2014 Initial Filing # 2014 3397452 (State of Delaware)

100. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Komatsu Financial Limited Partnership
Dated : October 25, 2016
Recorded : August 25, 2014 Initial Filing # 2014 3398062 (State of Delaware)

101. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : VFS Leasing Co.
Dated : October 25, 2016
Recorded : December 31, 2014 Initial Filing # 2014 5313879 (State of Delaware)

102. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : VFS Leasing Co.
Dated : October 25, 2016
Recorded : April 16, 2015 Initial Filing # 2015 1638427 (State of Delaware)

103. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : VFS Leasing Co.
Dated : October 25, 2016
Recorded : May 19, 2015 Initial Filing # 2015 1638427
Amendment # 2015 2131810 (State of Delaware)

104. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Wilmington Trust National Association
Dated : October 25, 2016
Recorded : April 17, 2015 Initial Filing # 2015 1654002 (State of Delaware)

105. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Wilmington Trust National Association
Dated : October 25, 2016
Recorded : May 11, 2015 Initial Filing # 2015 2007929 (State of Delaware)

106. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Applied Industrial Technologies
Dated : October 25, 2016
Recorded : July 15, 2015 Initial Filing # 2015 3063764 (State of Delaware)

107. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Applied Industrial Technologies
Dated : October 25, 2016
Recorded : February 5, 2016 Initial Filing # 2016 0707735 (State of Delaware)

108. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Zeigler Rental LLC
Dated : October 25, 2016
Recorded : June 10, 2011 Initial Filing # 2011 24558051 (State of Minnesota)
: May 24, 2016 Continuation # 889602400021

109. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Ziegler Inc.
Dated : October 25, 2016
Recorded : December 27, 2013 Initial Filing # 201334987191 (State of Minnesota)

110. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Road Machinery & Supplies Co.
Dated : October 25, 2016
Recorded : May 23, 2014 Initial Filing # 201436290332 (State of Minnesota)

111. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Road Machinery & Supplies Co.
Dated : October 25, 2016
Recorded : May 23, 2014 Initial Filing # 201436714698 (State of Minnesota)

112. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Zeigler Rental LLC
Dated : October 25, 2016
Recorded : August 1, 2014 Initial Filing # 201437469338 (State of Minnesota)

113. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Applied Industrial Technologies
Dated : October 25, 2016
Recorded : September 4, 2014 Initial Filing # 201437811047 (State of Minnesota)
: July 15, 2015 Collateral Added # 833330600022

114. A UCC financing statement given as additional security

Debtor : Magnetation Inc.
Secured Party : Office of the Commissioner if Iron Range Resources and Rehabilitation Board
Dated : October 25, 2016
Recorded : February 9, 2015 Initial Filing # 810632900021 (State of Minnesota)

115. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Baldwin Supply Company
Dated : October 25, 2016
Recorded : May 7, 2015 Initial Filing # 825584700021 (State of Minnesota)

116. A UCC financing statement given as additional security

Debtor : Mag Mining LLC
Secured Party : Range Electric
Dated : October 25, 2016
Recorded : May 22, 2015 Initial Filing # 827653600078 (State of Minnesota)

117. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Applied Industrial Technologies
Dated : October 25, 2016
Recorded : February 5, 2016 Initial Filing # 871307800021 (State of Minnesota)

118. A UCC financing statement given as additional security

Debtor : Magnetation Inc.
Secured Party : Magglobal, LLC
Dated : October 25, 2016
Recorded : July 13, 2016 Initial Filing # 895095000028 (State of Minnesota)

119. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Zeigler Rental LLC.
Dated : October 25, 2016
Recorded : June 10, 2011 Initial Filing #2011 24558051 (State of Minnesota)

120. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Zeigler Rental LLC
Dated : October 25, 2016
Recorded : October 21,2011 Initial Filing #2011 25929764 (State of Minnesota)

121. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Zeigler Rental LLC
Dated : October 25, 2016
Recorded : February 21, 2013 Initial Filing #2013 33132182 (State of Minnesota)

122. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Zeigler Rental LLC
Dated : October 25, 2016
Recorded : December 1, 2011 Initial Filing #2011 26354495 (State of Minnesota)

123. A UCC financing statement given as additional security

Debtor : Magnetation, Inc.
Secured Party : Zeigler Rental LLC
Dated : October 25, 2016
Recorded : February 21, 2013 Initial Filing #2013 3132176 (State of Minnesota)

124. A UCC financing statement given as additional security

Debtor : Magnetation, Inc.
Secured Party : JP Morgan Chase Bank, N.A.
Dated : October 25, 2016
Recorded : March 8, 2012 Initial Filing #2012 27486478 (State of Minnesota)

125. A UCC financing statement given as additional security

Debtor : Magnetation, Inc.
Secured Party : JP Morgan Chase Bank, N.A.
Dated : October 25, 2016
Recorded : March 8, 2012 Initial Filing #2012 27486478 (State of Minnesota)

126. A UCC financing statement given as additional security

Debtor : Magnetation, Inc.
Secured Party : JP Morgan Chase Bank, N.A.
Dated : October 25, 2016
Recorded : March 9, 2015 Initial Filing #815929100145 (State of Minnesota)

127. A UCC financing statement given as additional security

Debtor : Magnetation, Inc.
Secured Party : JP Morgan Chase Bank, N.A.
Dated : October 25, 2016
Recorded : April 11, 2013 Initial Filing #2013 34413443 (Jackson, Minnesota)

128. A UCC financing statement given as additional security

Debtor : Magnetation, Inc.
Secured Party : JP Morgan Chase Bank, N.A.
Dated : October 25, 2016
Recorded : April 11, 2013 Initial Filing #2013 34413443 (Jackson, Minnesota)

129. A UCC financing statement given as additional security

Debtor : Magnetation, Inc.
Secured Party : JP Morgan Chase Bank, N.A.
Dated : October 25, 2016
Recorded : March 9, 2015 Initial Filing #815929100157 (State of Minnesota)

130. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Zeigler Inc.
Dated : October 25, 2016
Recorded : December 27, 2013 Initial Filing #2013 34987191 (State of Minnesota)

131. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Road Machinery & Supplies Cp.
Dated : October 25, 2016
Recorded : April 18, 2014 Initial Filing #2014 36290332 (State of Minnesota)

132. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Road Machinery & Supplies Cp.
Dated : October 25, 2016
Recorded : May 23, 2014 Initial Filing #2014 36714698 (State of Minnesota)

133. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Zeigler Rental LLC
Dated : October 25, 2016
Recorded : August 1, 2014 Initial Filing #2014 37469338 (State of Minnesota)

134. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Applied Industrial Technologies, Inc.
Dated : October 25, 2016
Recorded : September 4, 2016 Initial Filing #2014 378114047 (State of Minnesota)

135. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : JP Morgan Chase Bank, N.A.
Dated : October 25, 2015
Recorded : April 16, 2003 Initial Filing # A000674565 (Itasca County, MN)

136. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : JP Morgan Chase Bank, N.A.
Dated : October 25, 2015
Recorded : April 16, 2003 Initial Filing # A000674566 (Itasca County, MN)

137. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : JP Morgan Chase Bank, N.A.
Dated : October 25, 2015
Recorded : April 16, 2003 Initial Filing # A000674567 (Itasca County, MN)

138. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : JP Morgan Chase Bank, N.A.
Dated : October 25, 2015
Recorded : April 16, 2003 Initial Filing # A000674568 (Itasca County, MN)

139. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : JP Morgan Chase Bank, N.A.
Dated : October 25, 2015
Recorded : April 16, 2003 Initial Filing # A000674569 (Itasca County, MN)

140. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : JP Morgan Chase Bank, N.A.
Book : 16 4 1
Page : 147 166 214
Dated : October 25, 2015
Recorded : April 16, 2003 Initial Filing # T000058692 (Itasca County, MN)

141. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : JP Morgan Chase Bank, N.A.
Dated : October 25, 2015
Recorded : May 20, 2013 Initial Filing # A000675593 (Itasca County, MN)

142. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : JP Morgan Chase Bank, N.A.
Dated : October 25, 2015
Recorded : May 20, 2013 Initial Filing # A000675594 (Itasca County, MN)

143. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : JP Morgan Chase Bank, N.A.
Dated : October 25, 2015
Recorded : May 20, 2013 Initial Filing # A000675595 (Itasca County, MN)

144. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : JP Morgan Chase Bank, N.A.
Dated : October 25, 2015
Recorded : May 21, 2013 Initial Filing # A000675616 (Itasca County, MN)

145. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : JP Morgan Chase Bank, N.A.
Dated : October 25, 2015
Recorded : May 21, 2013 Initial Filing # A000675617 (Itasca County, MN)

146. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : JP Morgan Chase Bank, N.A.
Book : 53
Page : 98-99
Dated : October 25, 2015
Recorded : May 24, 2013 Initial Filing # T000058837 (Itasca County, MN)

147. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : JP Morgan Chase Bank, N.A.
Book : 1, 4 6
Page : 214 166 147
Dated : October 25, 2015
Recorded : May 24, 2013 Initial Filing # T000058838 (Itasca County, MN)

148. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : JP Morgan Chase Bank, N.A.
Book : 30, 30 35
Page : 89 89 92

Dated : October 25, 2015
Recorded : May 24, 2013 Initial Filing # T000058839 (Itasca County, MN)

149. A UCC financing statement given as additional security

Debtor : Magnetation LLC and Mag Lands LLC
Secured Party : JP Morgan Chase Bank, N.A.
Dated : October 25, 2015
Recorded : June 27, 2013 Initial Filing # A000676790 (Itasca County, MN)

150. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : JP Morgan Chase Bank, N.A.
Dated : October 25, 2015
Recorded : June 27, 2013 Initial Filing # A000676791 (Itasca County, MN)

151. A UCC financing statement given as additional security

Debtor : Magnetation LLC and Mag Lands LLC
Secured Party : Wells Fargo Bank National Association
Dated : October 25, 2015
Recorded : June 27, 2013 Initial Filing # A000676792 (Itasca County, MN)

152. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Wells Fargo Bank National Association
Dated : October 25, 2015
Recorded : June 27, 2013 Initial Filing # A000676793 (Itasca County, MN)

153. A UCC financing statement given as additional security

Debtor : Magnetation LLC and Mag Lands LLC
Secured Party : Wells Fargo Bank National Association
Book : 72
Page : 37-38
Dated : October 25, 2015
Recorded : June 28, 2013 Initial Filing # T000058962 (Itasca County, MN)

154. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Wells Fargo Bank National Association
Book : 65 70 70
Page : 42 49 51
Dated : October 25, 2015
Recorded : June 28, 2013 Initial Filing # T000058963 (Itasca County, MN)

155. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Wells Fargo Bank National Association
Book : 72
Page : 37-38
Dated : October 25, 2015
Recorded : June 28, 2013 Initial Filing # T000058964 (Itasca County, MN)

156. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Wells Fargo Bank National Association
Book : 63 70 70
Page : 42 49 51
Dated : October 25, 2015
Recorded : June 28, 2013 Initial Filing # T000058965 (Itasca County, MN)

157. A UCC financing statement given as additional security

Debtor : Magnetation LLC and Mag Lands LLC
Secured Party : Wilmington Trust National Association
Dated : October 25, 2015
Recorded : April 20, 2015 Initial Filing # A000692970 (Itasca County, MN)

158. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Wilmington Trust National Association
Dated : October 25, 2015
Recorded : April 20, 2015 Initial Filing # A000692971 (Itasca County, MN)

159. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Wilmington Trust National Association
Wells Fargo Bank National Association
Dated : October 25, 2015
Recorded : April 20, 2015 Initial Filing # A000692996 (Itasca County, MN)

160. A UCC financing statement given as additional security

Debtor : Magnetation LLC and Mag Lands LLC
Secured Party : Wilmington Trust National Association
Book : 73
Page : 121-122
Dated : October 25, 2015
Recorded : April 23, 2015 Initial Filing # T000060974 (Itasca County, MN)

161. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Wilmington Trust National Association
Book : 73 73 73
Page : 72 73 76
Dated : October 25, 2015
Recorded : April 23, 2015 Initial Filing # T000060975 (Itasca County, MN)

162. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Wells Fargo Bank National Association
Wilmington Trust National Association
Dated : October 25, 2016
Recorded : April 23, 2015 Initial Filing # A0000393108 (Itasca County, MN)

163. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Wells Fargo Bank National Association
Wilmington Trust National Association
Book : 75
Page : 121-122
Dated : October 25, 2016
Recorded : April 23, 2015 Initial Filing #T000060976 (Itasca County, MN)

164. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Wells Fargo Bank National Association
Wilmington Trust National Association
Dated : October 25, 2016
Recorded : April 23, 2015 Initial Filing # A0000693109 (Itasca County, MN)

165. A UCC financing statement given as additional security

Debtor : Magnetation LLC
Secured Party : Wells Fargo Bank National Association
Wilmington Trust National Association
Book : 73
Page : 72,75,76
Dated : October 25, 2016
Recorded : April 23, 2015 Initial Filing #T000060977 (Itasca County, MN)

Mechanics Liens

Debtor: MAG PELLET LLC

File Number	File Date	Secured Party	Filing/Lien Type*	Amount	Jurisdiction
150100364	01/20/2015	Graybar Electric Company Inc.	ML	$270,117.30	White County, Indiana
150100017	01/05/2015	Huston Electric Inc.	ML	$2,107,071.28	White County, Indiana
150502939	05/07/2015	Wesco Distribution Inc.	ML	$15,471.28	White County, Indiana
150603795	06/17/2015	Shambaugh & Son LP	ML	$23,200.00	White County, Indiana
150603470	06/04/2015	Kelly Construction Of Indiana	ML	$44,574.91	White County, Indiana
150603430	06/01/2015	Ferguson Enterprises Inc.	ML	$312,670.17	White County, Indiana
150503410	05/29/2015	Central Rent-A-Crane Inc.	ML	$16,717.10	White County, Indiana
150503293	05/19/2015	One Source Equipment Rentals LLC.	ML	$15,358.61	White County, Indiana
150503259	05/15/2015	Wesco Distribution Inc.	ML	$4,538.84	White County, Indiana
150503228	05/12/2015	Midwest Constructors LLC.	ML	$2,432,189.00	White County, Indiana
150502860	05/01/2015	Accu-Dig Inc.	ML	$64,494.00	White County, Indiana
141106781	11/06/2014	Kropp Equipment Inc.	ML	$198,850.87	White County, Indiana
150402679 Sub Doc - 141106781	04/17/2015	Kropp Equipment Inc.	ML	$198,850.87	White County, Indiana
141207233	12/01/2014	Diversified Roofing Services LLC.	ML	$66,790.00	White County, Indiana
150402398	04/08/2015	Fastenal Company	ML	$9,716.00	White County, Indiana

File Number	File Date	Secured Party	Filing/Lien Type*	Amount	Jurisdiction
150402371	04/06/2015	Hammerlund's Champion Steel Inc.	ML	$845,052.45	White County, Indiana
141207355	12/11/2014	One Source Equipment Rentals LLC.	ML	$116,906.59	White County, Indiana
150302068	03/12/2015	Northern Industrial Erectors Inc.	ML	$1,460,756.93	White County, Indiana
141207585	12/29/2014	Ryan Fireprotection Inc.	ML	$55,094.70	White County, Indiana
140906167	09/30/2014	Moon Fabricating Corp	ML	$31,258.00	White County, Indiana
141006499	10/16/2014	Central Rent-A-Crane Inc.	ML	$105,752.50	White County, Indiana
141106773	11/05/2014	Independent Mechanical Industries Inc.	ML	$615,295.70	White County, Indiana
141006291	10/10/2014	Central Rent-A-Crane Inc.	ML	$225,048.32	White County, Indiana
141106785	11/06/2014	Independent Mechanical Industries Inc.	ML	$334,628.69	White County, Indiana
140905661	09/08/2014	Hth Companies Inc.	ML	$315,154.33	White County, Indiana
141106772	11/05/2014	Solid Platforms Inc.	ML	$22,991.94	White County, Indiana
141106771	11/05/2014	Solid Platforms Inc.	ML	$298,025.49	White County, Indiana
140704285	07/17/2014	Sterling Boiler And Mechanical Inc.	ML	$793,531.33	White County, Indiana
140703924	07/03/2014	Twin City Fan Companies Ltd	ML	$38,243.00	White County, Indiana
A000692457	4/06/2015	Hammerlund's Champion Steel, Inc.	ML	$2,562.96	Itasca County, Minnesota
A000692458	4/06/2015	Hammerlund's Champion Steel,	ML	$20,255.68	Itasca County, Minnesota

File Number	File Date	Secured Party	Filing/Lien Type*	Amount	Jurisdiction
		Inc.			
A000692459	4/06/2015	Hammerlund's Champion Steel, Inc.	ML	$88,457.41	Itasca County, Minnesota
A000692462	4/06/2015	Hammerlund Construction, Inc.	ML	$9,980.00	Itasca County, Minnesota

***ML=Mechanics Lien**

Debtor: MAGNETATION LLC

File Number	File Date	Secured Party	Filing/Lien Type*	Amount	Jurisdiction
140704285	07/17/2014	Sterling Boiler And Mechanical Inc.	ML	$793,531.33	Itasca County, Minnesota
140905661	09/08/2014	HTH Companies Inc.	ML	$315,154.33	Itasca County, Minnesota
141207233	12/01/2014	Diversified Roofing Services LLC	ML	$66,790.00	Itasca County, Minnesota
150502860	05/01/2015	Accu-Dig Inc.	ML	$64,494.00	Itasca County, Minnesota
150502906	05/05/2015	Xtreme Contractors Co LLC	ML	$698,129.25	Itasca County, Minnesota
150503228	05/12/2015	Midwest Constructors LLC	ML	$2,432,189.00	Itasca County, Minnesota

***ML=Mechanics Lien**

Debtor: MAG LANDS, LLC

File Number	File Date	Secured Party	Filing/Lien Type*	Amount	Jurisdiction
A000692456 A000703527	04/06/2015 05/26/2016	Hammerlund's Champion Steel, Inc.	ML PMLR	$209,767.24 $182,767.62 - partial satisfaction	Itasca County, Minnesota
A000692457	04/06/2015	Hammerlund's Champion Steel, Inc.	ML	$2,562.96	Itasca County, Minnesota
A000692458	04/06/2015	Hammerlund's Champion Steel, Inc.	ML	$20,255.66	Itasca County, Minnesota
A000692459	04/06/2015	Hammerlund's Champion Steel, Inc.	ML	$88,457,41	Itasca County, Minnesota
A000692460	04/06/2015	Hammerlund's Champion Steel, Inc.	ML	$91,002,83	Itasca County, Minnesota
A000692461	04/06/2015	Hammerlund Construction, Inc.	ML	$30,187.47	Itasca County, Minnesota
A000692462	04/06/2015	Hammerlund Construction, Inc.	ML	$9,980.00	Itasca County, Minnesota
A000693368	05/05/2015	Wesco Distribution, Inc.	ML	$459,892.01	Itasca County, Minnesota
A000693491	05/11/2015	Toltz King Duvall Anderson & Associates, Inc.	ML	$39,194.12	Itasca County, Minnesota
A000693613	05/13/2015	Trane US Inc.	ML	$217,576.16	Itasca County, Minnesota
A000693712	05/18/2015	Ulland Brothers, Inc.	ML	$1,124,341.74	Itasca County, Minnesota
A000693713	05/18/2015	Ulland Brothers, Inc.	ML	$466,100.75	Itasca County, Minnesota
A000693874	05/22/2015	Metso Minerals Industries, Inc.	ML	$189,019.24	Itasca County, Minnesota
A000693875	05/22/2015	Metso Minerals Industries, Inc.	ML	$75,595.25	Itasca County, Minnesota

File Number	File Date	Secured Party	Filing/Lien Type*	Amount	Jurisdiction
A000693915	05/26/2015	Jasper Engineering & Equipment Co	ML	$71,544.40	Itasca County, Minnesota
A000693916	05/26/2015	Jasper Engineering & Equipment Co	ML	$31,738.88	Itasca County, Minnesota
A000694031	06/01/2015	General Waste Disposal and Recovery Services, Inc.	ML	$7,395.28	Itasca County, Minnesota
A000694032	06/01/2015	General Waste Disposal and Recovery Services, Inc.	ML	$1,162.16	Itasca County, Minnesota
A000694138	06/03/2015	K Building Components, Inc.	ML	$28,412.86	Itasca County, Minnesota
A000694151	06/03/2015	Ferguson Enterprises, Inc.	ML	$36,910.67	Itasca County, Minnesota
A000694152	06/03/2015	Ferguson Enterprises, Inc.	ML	$5,086.27	Itasca County, Minnesota
A000694153	06/03/2015	Ferguson Enterprises, Inc.	ML	$348,854.87	Itasca County, Minnesota
A000694390	06/11/2015	Precision Testing, Inc.	ML	$9,740.00	Itasca County, Minnesota
A000694611	06/22/2015	Minnesota Industries, Inc.	ML	$29,929.80	Itasca County, Minnesota
A000694612	06/22/2015	Minnesota Industries, Inc.	ML	$37,269.39	Itasca County, Minnesota
A000694613	06/22/2015	Minnesota Industries, Inc.	ML	$5,236.89	Itasca County, Minnesota
A000695104	07/10/2015	Noramco Engineering Corporation	ML	$19,916.00	Itasca County, Minnesota
A000695185	07/14/2015	Viking Electric Supply Inc.	ML	$12,656.78	Itasca County, Minnesota

***ML=Mechanics Lien, PMLR=Partial Mechanics Lien Release**

Debtor: MAG MINING, LLC

File Number	File Date	Secured Party	Filing/Lien Type*	Amount	Jurisdiction
A000692456 A000703527	04/06/2015 05/26/2016	Hammerlunds Champion Steel Inc.	ML PMLR	$209,767.24 $182,767.24 - partial satisfaction	Itasca County, Minnesota
A000692460	04/06/2015	Hammerlunds Champion Steel Inc.	ML	$91,002.82	Itasca County, Minnesota
A000692461	04/06/2015	Hammerlund Construction Inc.	ML	$30,187.47	Itasca County, Minnesota
A000692463 A000695102	04/06/2015 07/10/2015	Hammerlund Construction Inc.	ML AML	$1,125,248.15 $1,174,740.58	Itasca County, Minnesota
A000692464 A000695197 A000703526	04/06/2015 07/14/2015 05/26/2016	Hammerlund Champion Steel Inc.	ML AML PMLR	$2,798,780.02 $2,919,674.58 $2,709,793.16	Itasca County, Minnesota
A000692465	04/06/2015	Hammerlund Champion Steel Inc.	ML	$348,686.58	Itasca County, Minnesota
A000692838	04/14/2015	Jamar Company	ML	$426,548.43	Itasca County, Minnesota
A000692839 A000693262	04/14/2015 04/30/2015	Jamar Company	ML AML	$875.00 $875.00	Itasca County, Minnesota
A000692862	04/14/2015	LeJeune Steel Company	ML	$1,572,897.99	Itasca County, Minnesota
A000692972	04/20/2015	Scheck Industrial Corporation	ML	$3,953,089.63	Itasca County, Minnesota
A000693275 A000694748	04/30/2015 06/29/2015	Parsons Electric LLC	ML AML	$77,297.00 $77,297.00	Itasca County, Minnesota
A000693276 A000694747	04/30/2015 06/29/2015	Parsons Electric LLC	ML AML	$2,208,765.78 $2,253,540.40	Itasca County, Minnesota
A000693368	05/05/2015	Wesco Distribution Inc.	ML	$459,892.01	Itasca County, Minnesota
A000693426	05/07/2015	Ironman Concrete Plumbing, Inc.	ML	$19,800.07	Itasca County, Minnesota
A000693490	05/11/2015	Toltz King Duvall Anderson & Associates, Inc.	ML	$358,897.38	Itasca County, Minnesota

File Number	File Date	Secured Party	Filing/Lien Type*	Amount	Jurisdiction
A000693491	05/11/2015	Toltz King Duvall Anderson & Associates, Inc.	ML	$39,194.12	Itasca County, Minnesota
A000693590	05/13/2015	Industrial Lubricant Company	ML	$85,146.50	Itasca County, Minnesota
A000694250	06/08/2015		AML	$85,146.50	
A000694251	06/08/2015		PMLR	$85,146.50 -	
A000693613	05/13/2015	Trane US Inc.	ML	$217,576.16	Itasca County, Minnesota
A000693620	05/14/2015	Northern Industrial Erectors, Inc.	ML	$58,329.38	Itasca County, Minnesota
A000693621	05/14/2015	Northern Industrial Erectors, Inc.	ML	$1,953,023.13	Itasca County, Minnesota
A000693674	05/15/2015	AW Kuettel & Sons, Inc.	ML	$1,229,499.43	Itasca County, Minnesota
A000693712	05/18/2015	Ulland Brothers, Inc.	ML	$1,241,341.74	Itasca County, Minnesota
A000693713	05/18/2015	Ulland Brothers, Inc.	ML	$466,100.75	Itasca County, Minnesota
A000693814	05/21/2015	Range Electric, Inc.	ML	$389,816.10	Itasca County, Minnesota
A000693874	05/22/2015	Metso Minerals Industries, Inc.	ML	$189,019.24	Itasca County, Minnesota
A000693916	05/26/2015	Jasper Engineering & Equipment Company	ML	$31,738.88	Itasca County, Minnesota
A000694138	06/03/2015	K Building Components	ML	$28,412.86	Itasca County, Minnesota
A000694151	06/03/2015	Ferguson Enterprises, Inc.	ML	$36,910.67	Itasca County, Minnesota
A000694152	06/03/2015	Ferguson Enterprises, Inc.	ML	$5,086.27	Itasca County, Minnesota
A000694153	06/03/2015	Ferguson Enterprises, Inc.	ML	$348,854.87	Itasca County, Minnesota
A000694390	06/11/2015	Precision Testing Inc.	ML	$9,740.00	Itasca County, Minnesota

File Number	File Date	Secured Party	Filing/Lien Type*	Amount	Jurisdiction
A000694397 A000702131	06/11/2015 04/04/2016	Rapids Process Equipment, Inc.	ML AML	$4,226.70 $4,128.76	Itasca County, Minnesota
A000694612	06/22/2015	Minnesota Industries, Inc.	ML	$37,269.39	Itasca County, Minnesota
A000695178	07/14/2015	Viking Electric Supply, Inc.	ML	$66,741.61	Itasca County, Minnesota
A000695216	07/15/2015	Viking Electric Supply, Inc.	ML	$7,818.90	Itasca County, Minnesota
A000695230	07/15/2015	Toltz King Duvall Anderson & Associates, Inc.	ML	$358,897.38	Itasca County, Minnesota
A000695394	07/21/2015	Ziegler, Inc.	ML	$33,625.77	Itasca County, Minnesota
A000696749	09/01/2015	John J Morgan Company	ML	$227,367.99	Itasca County, Minnesota
31CV153288	11/19/2015	The Jamar Company d/b/a ASDCO	MLDC	$426,548.43	Itasca County, Minnesota
31CV16672	03/10/2016	Hammerlund Champion Steel, Inc. d/b/a Champion Steel and Hammerlund Construction, Inc.	MLDC	$30,187.47	Itasca County, Minnesota

***ML=Mechanics Lien, PMLR=Partial Mechanics Lien Release, MLR=Mechanics Lien Release, MLDC=Mechanics Lien District Court, AML=Amend Mechanics Lien**

Debtor:MAGNETATION, LLC

File Number	File Date	Secured Party	Filing/Lien Type*	Amount	Jurisdiction
A000691752	03/04/2015	Precision Scaffolding, Inc.	ML	$144,263.34	Itasca County, Minnesota
A000692430	04/02/2015	JK Mechanical Contractors, Inc., Cash Flow Management, Inc.	ML	$549,974.61	Itasca County, Minnesota
A000692456 A000703527	04/06/2015 05/26/2016	Hammerlunds Champion Steel, Inc.	ML PMLR	$209,767.24 $182,767.24 - partial satisfaction of Mechanic's/ Miners lien	Itasca County, Minnesota
A000692257	04/06/2015	Hammerlund Construction, Inc.	ML	$2,562.96	Itasca County, Minnesota
A000692458	04/06/2015	Hammerlund Champion Steel, Inc./Hammerlund Construction	ML	$20,255.68	Itasca County, Minnesota
A000692459	04/06/2015	Hammerlund Champion Steel, Inc./Hammerlund Construction	ML	$88,457.41	Itasca County, Minnesota
A000692460	04/06/2015	Hammerlund Champion Steel, Inc./Hammerlund Construction	ML	$91,002.83	Itasca County, Minnesota
A000692461	04/06/2015	Hammerlund Champion Steel, Inc./Hammerlund Construction	ML	$30,187.47	Itasca County, Minnesota
A000692462	04/06/2015	Hammerlund Champion Steel, Inc./Hammerlund Construction	ML	$9,980.00	Itasca County, Minnesota

File Number	File Date	Secured Party	Filing/Lien Type*	Amount	Jurisdiction
A000692463 A000695102	04/06/2015 07/10/2015	Hammerlund Champion Steel, Inc./Hammerlund Construction	ML AML	$1,125,248.15 $1,174,740.58 - First Amend Mech/Miner	Itasca County, Minnesota
A000692464 A000695197 A000703526	04/06/2015 07/14/2015 05/26/2016	Hammerlund Champion Steel, Inc./Hammerlund Construction	ML AML PMLR	$2,798,780.02 $2,919,674.58 - First Amended Mech Lien $2,709,793.16 - partial satisfaction	Itasca County, Minnesota
A000692465	04/06/2015	Hammerlund Champion Steel, Inc./Hammerlund Construction	ML	$348,686.58	Itasca County, Minnesota
A000692685	04/09/2015	JK Mechanical Contractors, Inc.	ML	$58,532.62	Itasca County, Minnesota
A000692838	04/14/2015	Jamar Company	ML	$426,548.43	Itasca County, Minnesota
A000692839 A000693262	04/14/2015 04/30/2015	Jamar Company	ML AML	$875.00	Itasca County, Minnesota
A000692862	04/14/2015	LeJeune Steel Company	ML	$1,572,897.99	Itasca County, Minnesota
A000692972	04/20/2015	Scheck Industrial Corporation	ML	$3,953,089.63	Itasca County, Minnesota
A000693168	04/27/2015	Hunt Electric Corporation	ML	$1,913,159.54	Itasca County, Minnesota
A000693275 A000694748	04/30/2015 06/29/2015	Parsons Electric, LLC	ML AML	$77,297.00 $77,297.00	Itasca County, Minnesota
A000693276 A000694747	04/30/2015 06/29/2015	Parsons Electric, LLC	ML AML	$2,208,765.78 $2,253,540.40	Itasca County, Minnesota
A000693368	05/05/2015	Wesco Distribution, Inc.	ML	$459,892.01	Itasca County, Minnesota
A000693426	05/07/2015	Ironman Concrete Plumbing, Inc.	ML	$19,800.07	Itasca County, Minnesota
A000693550	05/12/2015	Jamar Company/ASDCO	ML	$42,900.64	Itasca County, Minnesota

File Number	File Date	Secured Party	Filing/Lien Type*	Amount	Jurisdiction
A000693613	05/13/2015	Trane US, Inc.	ML	$217,576.16	Itasca County, Minnesota
A000693620	05/14/2015	Northern Industrial Erectors, Inc.	ML	$58,329.38	Itasca County, Minnesota
A000693621	05/14/2015	Northern Industrial Erectors, Inc.	ML	$1,953,023.13	Itasca County, Minnesota
A000693674	05/15/2015	AW Kuettel & Sons, Inc.	ML	$1,229,499.43	Itasca County, Minnesota
A000693712	05/18/2015	Ulland Brothers, Inc.	ML	$1,241,341.74	Itasca County, Minnesota
A000693713	05/18/2015	Ulland Brothers, Inc.	ML	$466,100.75	Itasca County, Minnesota
A000693814	05/21/2015	Range Electric, Inc.	ML	$389,816.10	Itasca County, Minnesota
A000693874	05/22/2015	Metso Minerals Industries, Inc.	ML	$189,019.24	Itasca County, Minnesota
A000693875	05/22/2015	Metso Minerals Industries, Inc.	ML	$79,595.25	Itasca County, Minnesota
A000693900	05/26/2015	Brock White Company, LLC	ML	$12,501.00	Itasca County, Minnesota
A000693915	05/26/2015	Jasper Engineering & Equipment Co	ML	$71,544.40	Itasca County, Minnesota
A000693916	05/26/2015	Jasper Engineering & Equipment Co	ML	$31,738.88	Itasca County, Minnesota
A000693940	05/27/2015	Wesco Distribution, Inc.	ML	$7,527.74	Itasca County, Minnesota
A000694031	06/01/2015	General Waste Disposal and Recovery Services	ML	$7,395.28	Itasca County, Minnesota
A000694032	06/01/2015	General Waste Disposal and Recovery Services	ML	$1,162.16	Itasca County, Minnesota
A000694138	06/03/2015	K Building Components, Inc.	ML	$28,412.86	Itasca County, Minnesota
A000694151	06/03/2015	Ferguson Enterprises, Inc.	ML	$36,910.67	Itasca County, Minnesota

File Number	File Date	Secured Party	Filing/Lien Type*	Amount	Jurisdiction
A000694152	06/03/2015	Ferguson Enterprises, Inc.	ML	$5,086.27	Itasca County, Minnesota
A000694153	06/03/2015	Ferguson Enterprises, Inc.	ML	$348,854.87	Itasca County, Minnesota
A000694390	06/11/2015	Precision Testing, Inc.	ML	$9,740.00	Itasca County, Minnesota
A000694396 A000702130	06/11/2015 04/04/2016	Rapids Process Equipment, Inc.	ML AML	$32,841.49 $32,687.23 - amendment	Itasca County, Minnesota
A000694611	06/22/2015	Minnesota Industries, Inc.	ML	$29,929.80	Itasca County, Minnesota
A000694612	06/22/2015	Minnesota Industries, Inc.	ML	$37,269.39	Itasca County, Minnesota
A000694613	06/22/2015	Minnesota Industries, Inc.	ML	$5,236.89	Itasca County, Minnesota
A000695103	07/10/2015	Noramco Engineering Corporation	ML	$866,288.03	Itasca County, Minnesota
A000695104	07/10/2015	Noramco Engineering Corporation	ML	$19,916.00	Itasca County, Minnesota
A000695178	07/14/2015	Viking Electric Supply, Inc.	ML	$66,741.00	Itasca County, Minnesota
A000695185	07/14/2015	Viking Electric Supply, Inc.	ML	$12,656.78	Itasca County, Minnesota
A000695216	07/15/2015	Viking Electric Supply, Inc.	ML	$7,818.90	Itasca County, Minnesota
A000695230	07/15/2015	Toltz King Duvall Anderson & Associates, Inc./ TKDA	AML	$358,897.38	Itasca County, Minnesota
A000695392	07/21/2015	Ziegler, Inc.	ML	$489,602.92	Itasca County, Minnesota
A000695393	07/21/2015	Ziegler, Inc.	ML	$96,094.00	Itasca County, Minnesota

File Number	File Date	Secured Party	Filing/Lien Type*	Amount	Jurisdiction
A000695394	07/21/2015	Ziegler, Inc.	ML	$33,625.77	Itasca County, Minnesota
A000696301	08/24/2015	United Rentals, Inc.	ML	$225,869.48	Itasca County, Minnesota
A000696749	09/01/2015	John J Morgan Company	ML	$227,367.99	Itasca County, Minnesota
31CV153288	11/19/2015	The Jamar Company/ ASDCO	MLDC	$426,548.43	Itasca County, Minnesota
31CV16673	03/10/2016	Hammerlund Champion Steel Inc., d/b/a Champion Steel and Hammerlund Construction, Inc.	MLDC	$2,562.96	Itasca County, Minnesota
31CV16674	03/10/2016	Hammerlund Champion Steel Inc., d/b/a Champion Steel and Hammerlund Construction, Inc.	MLDC	$108,713.09	Itasca County, Minnesota

***ML=Mechanics Lien, PMLR=Partial Mechanics Lien Release, MLR=Mechanics Lien Release, MLDC=Mechanics Lien District Court, AML=Amend Mechanics Lien**

EXHIBIT 2

DEBTOR	COUNTERPARTY OR COUNTERPARTIES	MAILING ADDRESS	CITY	STATE	ZIP CODE	DESCRIPTION	CURE COSTS
Magnetation LLC	Allan B. Hammerel	5708 N. Via Lozana	Tucson	AZ	85750-1136	Arcturus Basin Lease July 1, 2010	0.00
Magnetation LLC	Barbara Cundiff Colville	507 Morning Star Lane	Newport Beach	CA	92660	Arcturus Basin Lease July 1, 2010	0.00
Mag Pellet LLC	BNSF Railway Company	Attn: Contract Administrator P.O. Box 961069	Ft. Worth	TX	76161-0069	Memorandum of Understanding between Mag Pellet LLC and BNSF Railway Company dated Jan 1, 2013	0.00
Mag Pellet, LLC	BNSF Railway Company and CSX Transportation	Carl R Ice 2650 Lou Menk Drive	Fort Worth	TX	76131	Master Transportation Contract By And Between Mag Pellet, LLC, BNSF Railway Company And CSX Transportation, Inc. Dated December 26, 2013	4,852,189.11
Magnetation LLC	BNSF Railway Company	Jones Lang Lasalle Global Services-RR, Inc 3017 Lou Menk Drive Suite 100	Fort Worth	TX	76131-2800	Demurrage Contract between BNSF Railway Company and Magnetation LLC dated 2/01/2015	0.00
Magnetation LLC	BNSF Railway Company	Jones Lang Lasalle Global Services-RR, Inc 3017 Lou Menk Drive Suite 100	Fort Worth	TX	76131-2800	First Amendment to Locomotive and Telemetry Device Use and Liability Agreement by and between Magnetation LLC and BNSF	0.00
Magnetation LLC	BNSF Railway Company	Jones Lang Lasalle Global Services-RR, Inc 3017 Lou Menk Drive Suite 100	Fort Worth	TX	76131-2800	Lease For Land And Track Between BNSF Railway Company And Magnetation LLC Dated July 25, 2011	0.00
Mag Lands LLC	Boundary Hunting Camp	Michael Antonovich 209 Hartley Avenue Box 224	Coleraine	MN	55722	Hunting Lease 6/30/2014; Mag Lands LLC Is Lessor (Hunting Lease)	0.00
Magnetation LLC	Caroline C. Herrick	411 Mulberry Point Rd.	Guilford	CT	06437	Arcturus Basin Lease July 1, 2010	0.00
Mag Mining LLC	Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37203	Agreement regarding CAT 262D Skid Steer Loader	4,954.92
Mag Mining LLC	Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37203	Agreement regarding new 390F Caterpillar Hydraulic Excavator	250,941.35
Mag Mining LLC	Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37203	Agreement regarding new D9T Caterpillar Track Type Tractor	139,978.41
Mag Mining LLC	Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37203	Agreement regarding new D6T Caterpillar Track Type Tractor	Included in D9T Lease immediately above
Mag Mining LLC	Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37203	Agreement regarding new TL1055C Caterpillar Telehandler	26,620.20
Mag Mining LLC	Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37203	Agreement regarding Sweepmaster Laymor Power Broom #34556	6,620.03

DEBTOR	COUNTERPARTY OR COUNTERPARTIES	MAILING ADDRESS	CITY	STATE	ZIP CODE	DESCRIPTION	CURE COSTS
Mag Mining LLC	Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37203	Agreement regarding CAT 289D Compact Track Loader	6,328.27
Mag Mining LLC	Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37203	Agreement regarding Sweepmaster Laymor Power Broom #34886	6,582.71
Mag Pellet, LLC	Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37023	Lease Agreement between Caterpillar Financial Services Group and Mag Pellet LLC (lease of 390 new rail cars for hauling iron ore concentrate from Minnesota to Indiana)	595,229.04
Mag Pellet, LLC	Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37023	Lease Agreement between Caterpillar Financial Services Group and Mag Pellet LLC (New G3516 Caterpillar Generator Set (6/4/14)	53,909.46
Mag Pellet, LLC	Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37023	Lease Agreement between Caterpillar Financial Services Group and Mag Pellet LLC (New G3516 Caterpillar Generator Set (9/17/14)	59,617.66
Magnetation LLC	Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37203	Agreement regarding 14M Caterpillar Motor Grader	25,569.97
Magnetation LLC	Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37203	Agreement regarding 740B CAT Articulated Truck T4R00904 ("740B Contract")	132,878.65
Magnetation LLC	Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37203	Agreement regarding 246C CAT Skid Steer Loader	Included in cure costs for 740B Contract
Magnetation LLC	Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37203	Agreement regarding 3043 & ALLMAN BROS Light Plants	Included in cure costs for 740B Contract
Magnetation LLC	Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37203	Agreement regarding 740 CAT Articulated Truck B1P06219	Included in cure costs for 740B Contract
Magnetation LLC	Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37203	Agreement regarding 966K CAT Medium Wheel Loader TFS00173	Included in cure costs for 740B Contract
Magnetation LLC	Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37203	Agreement regarding D6TLGP Used CAT Track Type Tractor	Included in cure costs for 740B Contract
Magnetation LLC	Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37203	Agreement regarding Ground Force Water Tank Trck - (T3)	Included in cure costs for 740B Contract

DEBTOR	COUNTERPARTY OR COUNTERPARTIES	MAILING ADDRESS	CITY	STATE	ZIP CODE	DESCRIPTION	CURE COSTS
Magnetation LLC	Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37203	Agreement regarding Mini Excavator	Included in cure costs for 740B Contract
Magnetation LLC	Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37203	Agreement regarding D8T CAT Track Type Tractor ("D8T Contract")	61,525.77
Magnetation LLC	Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37203	Agreement regarding 257B3 CAT Multi-Terrain Loader	Included in cure costs for D8T Contract
Magnetation LLC	Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37203	Agreement regarding 730 CAT Articulate Truck	Included in cure costs for D8T Contract
Magnetation LLC	Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37203	Agreement regarding Klein 6500 Gallon Water Tank (A)	Included in cure costs for D8T Contract
Magnetation LLC	Caterpillar Financial Services Corporation	2120 West End Avenue	Nashville	TN	37203	Agreement regarding Klein 6500 Gallon Water Tank (B)	Included in cure costs for D8T Contract
Magnetation LLC	Chester Company Limited Partnership	3920 13th Avenue East Suite 7	Hibbing	MN	55746	Holman Tailings Basin license agreement between Trustees Great Northern Iron Ore Properties, HT Surface and Minerals LLC, Chester Company Limited Partnership and Magnetation LLC, dated July 1, 2009, Misc. #1321 (f), As Amended	89,145.33
Mag Pellet, LLC	CSX TRANSPORATION, INC.	500 Water Street	Jacksonville	FL	32202	Facility Encroachment Agreement By And Between CSX Transportation, Inc. And Mag Pellet, LLC Effective As Of October 2, 2013	0.00
Mag Pellet, LLC	CSX TRANSPORATION, INC.	500 Water Street	Jacksonville	FL	32202	Private Sidetrack Agreement By And Between CSX Transportation, Inc. And Mag Pellet LLC Effective As Of April 8, 2014	0.00
Magnetation LLC	David L. Lewis	309 West 43rd Street Ste 105	Sioux Falls	SD	57105	Arcturus Basin Lease July 1, 2010	0.00
Magnetation LLC	Dr. Michael L. Tuck	5416 Lamona Avenue	Sherman Oaks	CA	91411	Arcturus Basin Lease July 1, 2010	0.00
Magnetation LLC	General Waste Disposal and Recovery Services	P.O. Box 312	Chisholm	MN	55719	Scram Mining Surface Access Lease	0.00
Magnetation LLC	Glacier Park Company	C/o Conoco Phillips Company Attn: Land Manager - Rockies Business Unit 600 North Dairy Ashford	Houston	TX	77079	Mineral And Surface Lease Canisteo #2 & Orwell Danube Between Glacier Park Company And Magnetation LLC, Dated December 1, 2014 (Mining & Partial Surface Lease)	144,955.07

DEBTOR	COUNTERPARTY OR COUNTERPARTIES	MAILING ADDRESS	CITY	STATE	ZIP CODE	DESCRIPTION	CURE COSTS
Mag Lands LLC	Hawkinson Construction Company, Inc	501 West County Road 63	Grand Rapids	MN	55744	Non-Exclusive Non-Metallic Minerals Lease Agreement For Construction Sand And Gravel By And Between Mag Lands, LLC And Hawkinson Construction Company, Inc. Dated As Of November 1, 2012; Mag Lands LLC Is Lessor	0.00
Magnetation LLC	HT Surface and Minerals LLC	C/o Hartley Trusts 740 East Superior Street	Duluth	MN	55802-2295	Holman Tailings Basin license agreement between Trustees Great Northern Iron Ore Properties, HT Surface and Minerals LLC, Chester Company Limited Partnership and Magnetation LLC, dated July 1, 2009, Misc. #1321 (f), As Amended	7,269.95
Magnetation LLC	Itasca County Land Department	C/o Land Commissioner 1177 Laprairie Avenue	Grand Rapids	MN	55744	Itasca County Pump Water Site Lease Agreement Between The State Of Minnesota And Magnetation LLC- Part Of S1/2 Nw, Section 22, T56n, R24w Dated Feb 28, 2012	0.00
Magnetation LLC	Itasca County Land Department (State of MN)	C/o Land Commissioner 1177 Laprairie Avenue	Grand Rapids	MN	55744	P4 Long Term Surface Lease #1 Agreement Between The State Of Minnesota And Magnetation LLC - Sec 19 And 30 Dated Feb 14, 2013	0.00
Magnetation LLC	Itasca County Land Department (State of MN)	C/o Land Commissioner 1177 Laprairie Avenue	Grand Rapids	MN	55744	P4 Long Term Surface Lease #2 Agreement Between The State Of Minnesota And Magnetation LLC - Sec 24 And 25 Dated Feb 14, 2013	0.00
Magnetation LLC	Itasca County Land Department (State of MN)	C/o Land Commissioner 1177 Laprairie Avenue	Grand Rapids	MN	55744	P4 Long Term Surface Lease Agreement #3 Between The State Of Minnesota And Magnetation LLC- Sec 35 Dated Feb 14, 2013	0.00
Magnetation LLC	Itasca County Regional Railroad Authority	Attn: Karin Grandia, Itasca County Engineer 123 4th Street Ne	Grand Rapids	MN	55744	Temporary Rail Line Access & Use Agreement September 23, 2014 (Rail Access & Use Agreement)	0.00
Magnetation LLC	James T. Lewis	309 West 43rd Street Ste 105	Sioux Falls	SD	57105	Arcturus Basin Lease July 1, 2010	0.00
Magnetation LLC	John C. Hammerel, Jr	10200 E. Celtic Drive	Scottsdale	AZ	85620	Arcturus Basin Lease July 1, 2010	0.00
Magnetation LLC	John G. Devaney	10 Pond View Drive	Nantucket	MA	02554-4403	Arcturus Basin Lease July 1, 2010	0.00
Magnetation LLC	John Parker Trauernicht	60 Bayville Rd.	Locust Valley	NY	11560	Arcturus Basin Lease July 1, 2010	0.00
Magnetation LLC	Katherine Gay Benoun	8, Rue De Levis	75017 Paris		France	Arcturus Basin Lease July 1, 2010	0.00

DEBTOR	COUNTERPARTY OR COUNTERPARTIES	MAILING ADDRESS	CITY	STATE	ZIP CODE	DESCRIPTION	CURE COSTS
Magnetation LLC	Kimball H. Knutson	2417 33rd Avenue South	Minneapolis	MN	55406-1463	Arcturus Basin Lease July 1, 2010	0.00
Magnetation LLC	Magnetation, Inc.	Attn: Mathew Lehtinen, President 102 Ne 3rd Street Suite 120	Grand Rapids	MN	55744	Restated and Amended Technology License Agreement, December 2016	0.00
Magnetation LLC	Mark P. Rogers	Trusteee Of The Mark P. Rogers Revocable Trust Uta Dated August 16, 2006 2410 Merrimac Lane	Plymouth	MN	55447	Arcturus Basin Lease July 1, 2010	0.00
Magnetation LLC	Minnesota Department Of Natural Resources	Northeast Region 1201 East Highway 2	Grand Rapids	MN	55744	Agreement for Maintenance and Use of DNR Water Level Observation Well By And Between The State of Minnesota And Magnetation LLC, dated June 19, 2013	0.00
Magnetation LLC	Minnesota Department Of Natural Resources	Northeast Region 1201 East Highway 2	Grand Rapids	MN	55744	Lease Amendment To Lease #Lmis000786 By And Between The State Of Minnesota And Magnetation LLC	0.00
Magnetation LLC	Minnesota Department Of Natural Resources	Northeast Region 1201 East Highway 2	Grand Rapids	MN	55744	Miscellaneous Lease #Lmis000786 By And Between The State Of Minnesota And Magnetation LLC, Land Description: Gl12, S36, T56n, R24w, Nwnw, S36, T56n, R24w, Itasca County Effective Date July 1, 2014 (Access Lease)	0.00
Magnetation LLC	Minnesota Department Of Natural Resources	Northeast Region 1201 East Highway 2	Grand Rapids	MN	55744	Miscellaneous Lease By And Between The State Of Minnesota And Magnetation LLC, Lease #Lmis000790, Land Description: S35 T 57n R22w, Itasca County Effective Date October 1, 2012 (Access Lease)	0.00
Magnetation LLC	MINNESOTA POWER	Attn: Vp Marketing & Corp. Communications 30 West Superior Street	Duluth	MN	55802	Amended and Restated Electric Service Agreement dated May 4, 2015	590,281.36
Magnetation LLC	MINNESOTA POWER	Attn: Vice President-marketing And Corporate Communications 30 West Superior Street	Duluth	MN	55802	Electric Service Agreement between Magnetation LLC and Minnesota Power dated Jan 27, 2014	0.00
Magnetation LLC	MINNESOTA POWER	Patrick Mullen Vp Marketing & Public Affairs 30 West Superior Street	Duluth	MN	55802	Electric Service Agreement dated May 2, 2011, as amended January 17, 2013.	0.00
Magnetation LLC	Minnesota Power	Attn: Kristin Renskers- Mn Representative 30 West Superior Street	Duluth	MN	55802	Outdoor And Area Light Agreement Between Minnesota Power And Mag Mining, LLC Dated 12/23/2014	0.00
Mag Lands LLC	Moose's Hunting Camp	David Vidmar 36477 Freestone Rd	Grand Rapids	MN	55744	Hunting Lease 8/15/2014; Mag Lands LLC Is Lessor (Hunting Lease)	0.00
Mag Pellet, LLC	Northern Indiana Public Service Company	Attn: Diane Cota 801 E. 86th Avenue	Merrillville	IN	46410	Agreement for Extension of Facilities for the Provision of Electric Service Beyond Standard Service, dated December 19, 2012	30,969.33
Mag Pellet, LLC	Progress Rail	25083 Network Place	Chicago	IL	60673	Lease Agreement between Progress Rail and Mag Pellet LLC (lease of 390 new rail cars for hauling iron ore concentrate from Minnesota to Indiana)	368,550.00

DEBTOR	COUNTERPARTY OR COUNTERPARTIES	MAILING ADDRESS	CITY	STATE	ZIP CODE	DESCRIPTION	CURE COSTS
Magnetation LLC	Randall Lee Vannet Trust	Randall Lee Vannet, Trustee 28938 Arbo Road	Grand Rapids	MN	55744	License Agreement Between Mag Mining, LLC And Randall Lee Vannet As Trustee Of The Randall Lee Vannet Revocable Living Trust Uta Dated April 10, 2007 Dated May 13, 2014	0.00
Magnetation LLC	RGGS LAND & MINERALS, LTD., L.P	P.O. Box 1266 209 East 8th Street S.	Virginia	MN	55792	East Trout Lake Scram Mining Lease By And Between Rggs Land & Minerals, Ltd., L.P. And Magnetation, LLC; Dated January 1, 2010	188,822.47
Magnetation LLC	RGGS LAND & MINERALS, LTD., L.P	P.O. Box 1266 209 East 8th Street S.	Virginia	MN	55792	Mining Lease By And Between Rggs Land & Minerals, Ltd., L.P. And Mag Mining, LLC, Magnetation P4 West	0.00
Mag Mining LLC	RGGS Land & Minerals, LTD., L.P.	Attn: Daniel Clark 100 Waugh Drive, Suite 400	Houston	TX	77007	Canisteo 2 Tailings Basin - Scram Mining Lease Between Rggs Land & Minerals, Ltd., L.P. And Mag Mining, LLC Dated January 1,2015 (Mining & Partial Surface Lease)	93,738.67
Mag Mining LLC	RGGS Land & Minerals, LTD., L.P.	P.O. Box 1266 209 East 8th Street S.	Virginia	MN	55792	Mining Lease By And Between Rggs Land & Minerals, Ltd., L.P. And Mag Mining, LLC, Magnetation P4 West Mining Lease Effective Date October 1, 2013 (Mining & Surface Lease)	113,214.43
Magnetation LLC	RGGS Land & Minerals, LTD., L.P.	P.O. Box 1266 209 East 8th Street S.	Virginia	MN	55792	Canisteo Tailings Basin - Scram Mining Lease between RGGS Land & Minerals, Ltd., L.P. and Mag Mining, LLC dated January 1, 2015	0.00
Mag Lands LLC	Schwartz Redi-Mix, Inc.	34882 Scenic Hwy	Bovey	MN	55709	Non-Exclusive Non-Metallic Minerals Lease Agreement For Construction Sand And Gravel By And Between Mag Lands, LLC And Schwartz Redi-Mix, Inc. Dated As Of November 12, 2012; Mag Lands LLC Is Lessor (Sand & Gravel Lease)	0.00
Magnetation LLC	Stephen E. Lewis	2660 Maple Avenue	Northbrook	IL	60062	Arcturus Basin Lease July 1, 2010	0.00
Mag Mining LLC	The State of Minnesota	Resources Div Of Lands & Minerals Director, Division Of Lands And Minerals 500 Lafayette Road	St. Paul	MN	55155-4045	Lease For Iron-Bearing Materials Buckeye Tailings Basin #2 Between The State Of Minnesota And Mag Mining LLC, Dated May 31, 2012, Lease No. R-108; As Amended 1/1/2015 (Mining Lease)	347,622.00
Mag Mining LLC	The State of Minnesota	Resources Div Of Lands & Minerals Director, Division Of Lands And Minerals 500 Lafayette Road	St. Paul	MN	55155-4045	Lease For Iron-Bearing Materials Canisteo #2 Between The State Of Minnesota And Mag Mining LLC, Dated October 3, 2011, Lease (Mining Lease)	0.00
Magnetation LLC	The State of Minnesota	Resources Div Of Lands & Minerals Director, Division Of Lands And Minerals 500 Lafayette Road	St. Paul	MN	55155-4045	Lease for Iron-Bearing Materials Canisteo #1 between The State of Minnesota and Mag Mining LLC, dated 1/7/2015, Lease no. R-125	0.00
Magnetation LLC	The State of Minnesota	Resources Div Of Lands & Minerals Director, Division Of Lands And Minerals 500 Lafayette Road	St. Paul	MN	55155-4045	Lease for Iron-Bearing Materials Canisteo #2 between The State of Minnesota and Mag Mining LLC, dated October 3, 2011, Lease no. R-103; as amended 1/1/2015	1,425,549.98

DEBTOR	COUNTERPARTY OR COUNTERPARTIES	MAILING ADDRESS	CITY	STATE	ZIP CODE	DESCRIPTION	CURE COSTS
Magnetation LLC	The State Of Minnesota	Department Of Natural Resources Division Of Lands And Minerals 500 Lafayette Road	St. Paul	MN	55155-4045	State Iron Ore Mining Lease - Lease No.2105-N	0.00
Magnetation LLC	The State Of Minnesota	Department Of Natural Resources Division Of Lands And Minerals 500 Lafayette Road	St. Paul	MN	55155-4045	State Iron Ore Mining Lease - Lease No.2106-N	0.00
Magnetation LLC	The State Of Minnesota	Department Of Natural Resources Division Of Lands And Minerals 500 Lafayette Road	St. Paul	MN	55155-4045	State Iron Ore Mining Lease - Lease No.2107-N	0.00
Magnetation LLC	The State Of Minnesota	Department Of Natural Resources Division Of Lands And Minerals 500 Lafayette Road	St. Paul	MN	55155-4045	State Iron Ore Mining Lease Between That State Of Minnesota, And Magnetation LLC Dated March 7, 2013 - Lease No. I-5105-N	0.00
Magnetation LLC	The State Of Minnesota	Department Of Natural Resources Division Of Lands And Minerals 500 Lafayette Road	St. Paul	MN	55155-4045	State Iron Ore Mining Lease - Lease No. 2108-N North Half Of Southeast (N1/2-Se1/4), Southwest Quarter Of Southwest (Sw1/4 -Se1/4), All In Thirty-Six (36), Township Fifty-Six (56) North, Range Twenty-Five (25) West Of The Fourth Principal Meridian	0.00
Magnetation LLC	Troumbly Brothers Partnership	PO Box 405	Taconite	MN	55786	Easement Agreement Between Troumbly Brothers, A General Partnership And Magnetation LLC Dated March 27, 2012	0.00
Magnetation LLC	Trustees Great Northern Iron Ore Properties	801 East Howard Street P.O. Box 429	Hibbing	MN	55746-0429	Holman Tailings Basin license agreement between Trustees Great Northern Iron Ore Properties, HT Surface and Minerals LLC, Chester Company Limited Partnership and Magnetation LLC, dated July 1, 2009, Misc. #1321 (f), As Amended	39,726.03
Magnetation LLC	Trustees Great Northern Iron Ore Properties	801 East Howard Street P.O. Box 429	Hibbing	MN	55746-0429	License Agreement #1350, Basins/Dumps/Stockpiles Between Trustees Great Northern Iron Ore Properties And Magnetation LLC (Mining & Surface License Agreement)	147,880.43
Magnetation LLC	United States Steel Corporation	Minnesota Ore Operation C/o Regional Manager North Old Highway 169 Po Box 417	Mt. Iron	MN	55768	Mining Lease - Mc2 Within Section 36, Township 57 North, Range 22 West Of The Fourth Principal Meridian, Itasca County	0.00
Magnetation LLC	Ward B. Lewis Jr. Revocable Trust	Uta Dated September 15, 1977 C/o Erica Lewis 490 South Milledge Avenue	Athens	GA	30601	Arcturus Basin Lease July 1, 2010	0.00
Magnetation LLC	Weir Industrial	JP Van Leeuwen Managing Director Egtenrayseweg 9 PH Venlo			5928 The Netherlands	Purchase Order and Contract for the procurement of a High Pressure Grinding Roll	513,898.00
Mag Pellet, LLC	White County, Indiana	Attn: Auditor 2013 W. 25th South	Monticello	IN	47960	Loan Agreement between Mag Pellet, LLC and White County, Indiana dated as of June 1, 2013	0.00

DEBTOR	COUNTERPARTY OR COUNTERPARTIES	MAILING ADDRESS	CITY	STATE	ZIP CODE	DESCRIPTION	CURE COSTS
Mag Pellet, LLC	White County, Indiana	Attn: Auditor 2013 W. 25th South	Monticello	IN	47960	MAG PELLET, LLC NOTE, SERIES 2013 executed by Mag Pellet, LLC in favor of White County, Indiana	0.00
Mag Pellet, LLC	White County, Indiana	Attn: Auditor 2013 W. 25th South	Monticello	IN	47960	White County, Indiana Taxable Economic Development Revenue Bond, Series 2013 (Mag Pellet, LLC Project) issued in the original principal amount of $23,470,000	0.00
Mag Pellet, LLC	White County, Indiana Old National Trust Company	Attn: Auditor 2013 W. 25th South One Main St	Monticello Evansville	IN IN	47960 47708	Trust Indenture by and between White County, Indiana and Old National Trust Company dated as of June 1, 2013	0.00
Magnetation LLC	William Clayton Trauernicht	60 Bayville Rd.	Locust Valley	NY	11560	Arcturus Basin Lease July 1, 2010	0.00

EXHIBIT 3

UNITED STATES BANKRUPTCY COURT

DISTRICT OF MINNESOTA

In Re:

Magnetation, LLC,

File No. 15-50307

BEFORE THE HONORABLE

WILLIAM J. FISHER

United States Bankruptcy Judge

* * *

TRANSCRIPT OF PROCEEDINGS

October 4, 2016

* * *

Proceedings recorded by digitally recording, transcript prepared by transcription service.

NEIL K. JOHNSON REPORTING AGENCY
Six West 5th Street, Suite 700
Saint Paul, Minnesota 55102
Leslie R. Pingley

APPEARANCES

MR. MARK KALLA and MS. ALYSSA TROJE, Attorney at Law, 120 South Sixth Street, Suite 2500, Minneapolis, Minnesota 55402 appeared on behalf of Magnetation, LLC.

MS. AMELIA T.R. STARR, MS. MICHELLE MCGREAL and MR. BRETT MCMAHON, Attorneys at Law, 450 Lexington Avenue, New York, New York 10017 appeared on behalf of Magnetation, LLC.

MR. PHILLIP BOHL, Attorney at Law, 80 South Eighth Street, Suite 500, Minneapolis, Minnesota 55402 appeared on behalf of Scheck Industrial Corporation.

APPEARANCES (CONT'D)

MS. MONICA L. CLARK and MS. ELIZABETH A. HULSEBOS, Attorneys at Law, 50 South Sixth Street, Suite 1500, Minneapolis, Minnesota 55402 appeared on behalf of Caterpillar Financial Services and Progress Rail Leasing Corporation.

MS. WENDY S. TIEN, Assistant Attorney General, 445 Minnesota Street, Suite 900, Saint Paul, Minnesota 55101 appeared on behalf of Minnesota Department of Natural Resources.

MR. EVAN R. FLECK, Attorney at Law, 1 Chase Manhattan Plaza, New York, New York 10005 appeared on behalf of Ad Hoc Committee of Senior Secured Noteholders.

APPEARANCES (CONT'D)

MS. KATHERINE A. MCLENDON, MS. SUSANNAH GELTMAN, MR. SANDY QUSBA, and MR. BRYCE PASHLER, Attorneys at Law, 425 Lexington Avenue, New York, New York 10017 appeared on behalf of JP Morgan Chase Bank.

MR. STEVEN W. MEYER, Attorney at Law, 45 South Seventh Street, Suite 3400, Minneapolis, Minnesota 55117 appeared on behalf of Ad Hoc Committee of Senior Secured Noteholders.

MR. WILLIAM P. WASSWEILER, Attorney at Law, 80 South Eighth Street, Sutie 4200, Minneapolis, Minnesota 55402 appeared on behalf of Wilmington Trust.

APPEARANCES (CONT'D)

MS. SARAH J. WENCIL, Attorney at Law, 300 South Fourth Street, Suite 1015, Minneapolis, Minnesota 55415 appeared on behalf of the United States Trustee.

MR. DENNIS M. RYAN and MR. CHRISTOPHER HARAYDA, Attorneys at Law, 90 South Seventh Street, Suite 2200, Minneapolis, Minnesota 55402 appeared on behalf of AK Steel Corporation.

MR. SETH VAN AALTEN and MS. CATHY HERSHCOPF, Attorneys at Law, 1114 Avenue of the Americans, New York, New York 10036 appeared on behalf of UCC.

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APPEARANCES (CONT'D)

MR. CAMERON LALLIER, Attorney at Law, 250 Marquette Avenue South, Suite 1200, Minneapolis, Minnesota 55401 appeared on behalf of UCC.

MR. DENNIS F. DUNNE and MR. DAVID COHEN, Attorneys at Law, 1 Chase Manhattan Plaza, New York, New York 10005 appeared on behalf of the Ad Hoc Committee of Senior Secured Lenders.

MR. BENJAMIN GURSTELLE, Attorney at Law, 2200 IDS Center, 80 South Eighth Street, Minneapolis, Minnesota 55402 appeared on behalf of JP Morgan.

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APPEARANCES (CONT'D)

MS. AMY J. SWEDBERG, Attorney at Law, 90 South Seventh Street, Suite 3300, Minneapolis, Minnesota 55402 appeared on behalf of Magnetation, Inc.

MR. C. DANIEL MOTSINGER, Attorney at Law, One Indiana Square, Suite 2800, Indianapolis, Indiana 46204 appeared on behalf of Magnetation, Inc.

MR. JOSEPH W. LAWVER, Attorney at Law, 100 South Fifth Street, Suite 1400, Minneapolis, Minnesota 55402 appeared on behalf of JK Mechanical.

MR. ROBERT W. DARNELL, Attorney at Law, P.O. Box 7611, Washington, D.C. 2004 appeared on behalf of the U.S. Department of Justice and the EPA.

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APPEARANCES (CONT'D)

MR. BRIAN L. BOYSEN, Attorney at Law, 17683 George Moran Drive, Eden Prairie, Minnesota 55347 appeared on behalf of John J. Morgan Company.

MR. PAUL R. RATELLE, Attorney at Law, 333 South Seventh Street, Suite 2600, Minneapolis, Minnesota 55402 appeared on behalf of Hammerlund Construction, Hammerlund Champion Steel.

MR. ROBERT A. JUDD, Attorney at Law, 80 South Eighth Street, Suite 1700, Minneapolis, Minnesota 55402 appeared on behalf of Westco Distribution.

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APPEARANCES (CONT'D)

MR. JOHN J. MUHAR, Itasca County Attorney, 123 Fourth Street Northeast, Grand Rapids, Minnesota 55744 appeared on behalf of Itasca County.

MS. SARAH E. DOERR, Attorney at Law, 150 South Fifth Street, Suite 1200, Minneapolis, Minnesota 55402 appeared on behalf of Jamar Company, Hunt Electric, LeJeunne Steel and Parsons Electric.

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I N D E X

EXAMINATION

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P R O C E E D I N G S

(Wherein, the following digitally recorded proceedings were had)

THE COURT: Good morning. Please be seated. All right. We will go on the record in the Magnetation case, which is No. 15-50307 and we will -- this may take awhile. We will note appearances for the record. We will start to my right over here and just work our way around the room.

We're working on the chair situation. We'll figure it out, but go ahead.

MR. RYAN: Good morning, Your Honor. Dennis Ryan of Faegre Baker Daniels. With me today is CJ Harayda representing AK Steel Corporation.

THE COURT: Okay. Good morning, Mr. Ryan and Mr. Harayda.

MS. STARR: Good morning, Your Honor. Amelia Starr, from Davis Polk & Wardwell on behalf of the debtors.

I'm here today with Ms. Michelle McGreal and Mr. Brett McMahon, also from Davis Polk.

THE COURT: I'm sorry, your name, Sir?

MR. MCMAHON: Brett McMahon.

THE COURT: Good morning to all three of you and welcome to Minnesota. I hope you didn't watch the football game.

MR. DUNNE: Good morning, Your Honor. Dennis Dunne from Milbank Tweed Hadley & McCoy on behalf of the Ad Hoc Committee of Senior Secured Noteholders and DIP lenders and I'm joined by my co-counsel Steve Meyer.

THE COURT: Good morning, Mr. Dunne and Mr. Meyer.

MS. MCLENDON: Good morning. Katherine McLendon of Simpson Thacher & Bartlett. We're JP Morgan Chase's agent for the pre-petition revolving lenders.

I'm here with Sandy Qusba and also Susannah Geltman and Bryce Pashler from Simpson Thacher.

THE COURT: I'm sorry. Say their two names.

MS. MCLENDON: Susannah Geltman and Bryce Pashler.

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THE COURT: Okay. Good morning to all of you.

MS. WENCIL: Good morning, Your Honor. Sarah Wencil for the U.S. Trustee.

THE COURT: Good morning, Ms. Wencil.

MS. HERSHCOPF: Good morning, Your Honor. Cathy Herschcopf, Cooley LLP, on behalf of the committee.

I have with me also this morning, if I can find him in the court room. Seth Van Aalten (Unintelligible).

THE COURT: Okay.

MR. KALLA: Good morning, Your Honor. Mark Kalla and Alyssa Troje from Lapp Libra firm as local counsel for the Debtors.

THE COURT: Okay. If you could speak louder at this point because you're now far from the microphone. In fact, if you need to, just walk right up to the lectern.

MR. LALLIER: Good morning, Your Honor. Cameron Lallier, local counsel for the Unsecured Creditor's Committee.

THE COURT: Okay. Good morning, Mr. Lallier.

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MR. GURSTELLE: Good morning, Your Honor. Ben Gurstelle of Briggs & Morgan, local counsel for JP Morgan.

THE COURT: All right.

MS. SWEDBERG: Amy Swedberg, Maslon, local counsel for Magnetation, Inc. With me today is Dan Motsinger from Krieg DeVault.

THE COURT: I'm sorry. Can you say that name louder, please?

MS. SWEDBERG: Dan Motsinger from Krieg Devault.

THE COURT: Okay. Good morning to both you of.

MS. HULSEBOS: Good morning, Your Honor. Elizabeth Hulsebos and Monica Clark here for Caterpillar Financial Services Corporation and Progress Rail.

THE COURT: Okay. Good morning to both of you.

MR. WASSWEILER: Good morning, Your Honor. Bill Wassweiler of Lindquist & Vennum on behalf of Wilmington Trust, indentured trustee for the senior secured lenders.

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MR. LAWVER: Good morning, Your Honor. Joseph Lawver representing JK Mechanical, a lien holder.

THE COURT: I'm sorry, you need to be louder, Sir.

MR. LAWVER: I represent JK Mechanical.

THE COURT: Thank you. Good morning, Sir.

MR. BOHL: Good morning, Your Honor. Phillip Bohl, Gray Plant Mooty, representing Scheck Industrial Corporation and its assignee.

THE COURT: Okay. Good morning.

MR. COHEN: Good morning, Your Honor. David Cohen, Milbank Tweed Hadley & McCloy on behalf of the Ad Hoc Committee.

THE COURT: Good morning.

MS. TIEN: Good morning, Your Honor. Wendy Tien for the Minnesota Attorney General's Office on behalf of the Minnesota Department of Natural Resources.

THE COURT: Okay. Good morning.

MR. DARNELL: Good morning, Your Honor. Robert Darnell of the U.S. Department

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of Justice on behalf of the U.S. Environmental Protection Agency.

THE COURT: Good morning.

MR. BOYSEN: Good morning, Your Honor. Brian L. Boysen, (Unintelligible) representing John J. Morgan Company, one of the lien holders, mechanic's liens.

THE COURT: And your last name again, Sir?

MR. BOYSEN: Boysen, B-O-Y-S-E-N.

THE COURT: Thank you, Sir.

MR. RATELLE: Your Honor, Paul Ratelle appearing on behalf of Hammerlund Construction, Hammerlund Champion Steel, (Unintelligible) and Northern Industrial.

THE COURT: Okay. Good morning. Anyone else?

MR. JUDD: Good morning, Your Honor. Robert Judd, Wagner, Falconer & Judd for the lien claimant, Westco.

THE COURT: Name your client again, please, Sir?

MR. JUDD: Westco.

THE COURT: Okay. Good morning, Sir.

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MR. MUHAR: John J. Muhar appearing for Itasca County.

THE COURT: Okay. Good morning, Sir. You will need to come in now up from the lectern. You need to let her in as well.

MS. DOERR: Good morning, Your Honor. Sarah Doerr of Moss & Barnett on behalf of mechanic's lien claimants the Jamar Company, the Hunt company, LeJeunne and Parsons.

THE COURT: Okay. Thank you. Anyone else wishing to make an appearance you need to step in?

All right. Those of you out there, just step in and fill around over here on the side, over there on the side for right now. You're fine. We will get chairs so you don't need to stand.

Those of you who are only here to listen, obviously we have limited space. If you are here to listen, we can set you up in a different room. We can put a speaker and get it on the phone part and get you listening in there if you are not here to actually talk. I can't tell you you have to do that, but you

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would be doing us a favor in doing so and, of course, you can always come in if there's something of urgence, so we can get you setup just out in the hall here or out in one of the conference rooms. We will take a pole of that later.

A couple of things, I know that some people want a little bit more time to talk.

A couple of things, some people worrying about the courtroom rules, cell phones are okay if you're just texting or email on them, that's just fine. Just not talking on them. Computers are fine. Food with my permission. No smoking. No smoking in the courtroom.

You can talk among each other as long as it's not disturbing anyone. If you're talking loudly enough you should just go out in the hall. I have no problem with people coming and going. We don't need to ask permission to leave the courtroom.

We are taking a break at 10:00 today. We will take breaks probably roughly every hour and a half to hour and 45 minutes. We're not trying to set an endurance record or see how strong your bladders are. We will take

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breaks. They may be short, but I will give people a chance to talk and it also gives you a chance to confer as well.

Some of these things have been resolved. I encourage that the ones that have been resolved if they need to make a record of the resolution that we do that first after the break so that those people don't need to sit here for however long this may take today. It will also open up seats in the courtroom. Of course, anyone is welcome to stay, but if the issues have been resolved and they would like to go and all they are awaiting for is to put something on the record as to what that resolution is, we can get that out of the way early.

Also -- I also -- there's one -- I will raise this point for the debtor. The way it's been structured, this is an all or nothing type order. It's not four separate motions. I am aware of that, but I will tell you right now whether Caterpillar has actually settled or not, that the issues they raised are of a great concern to me on due process grounds. In other words, less than

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$500,000.00, no notice on assumptions, I am not going to do it, so be aware of that. I will let you guys talk because I think that's important. The more you can get it resolved the better off we are.

But that also goes for the governmental entities. That also goes for abandonment. Abandonment they have -- has to be given proper notice. If there's some reason to expedite something, you can move for an expedited hearing on it.

The only thing that I would be willing to take short notice for is when there's stipulated agreement. In other words, the counter-party to an executory contract has agreed to assumption, but other parties need to review that also so it's not just those two parties.

So that's my issue. I just wanted to make sure you're aware of that because, again, the order is structured as an all or nothing type of deal.

All right. Ms. Starr, are you speaking for the debtor?

MS. STARR: Yes, I think -- we

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will all be taking turns, but I will start out.

THE COURT: Why don't you step up to the lectern.

MS. STARR: Yes. Your Honor, I am happy if you think it will be helpful to give a little bit of an introduction to how I think this hearing will be conducted today, but I first wanted to make a request on behalf of the debtors and a number of the parties in the courtroom that there have been negotiations with respect to the objection posted by the Ad Hoc Group.

The parties have been talking intensively all weekend and all night long and I think that the discussions are very, very close to resolution and it is the view of the debtors and I think that there's agreement on the part of the other proponents, AK Steel and the Ad Hoc Group, et cetera, that short continuance to allow those discussions to hopefully resolve themselves would be very helpful.

As we're very hopeful if that happens, there will be a withdrawal of that objection.

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That wouldn't prevent the need for a hearing, Your Honor. We still do need to have a hearing and make a full evidentiary showing to Your Honor with respect to the GSA and there are other objectors who will not be resolved, but I think that that will streamline the hearing and make it a more efficient presentation, but also we think this is a good deal for the debtors and we would like to get it accomplished if we possibly can.

THE COURT: How much time are you asking for?

MS. STARR: Mr. Dunne, how much time do you think we need.

MR. DUNNE: I admit, confession, I always underestimate these things, but I was thinking about 30 minutes.

THE COURT: All right. I will give you 30 minutes.

The concern I have is, as I look around this room and multiply the attorney's time of billable hours my math can't -- my multiplication can't work that high. There are people who are being paid by their

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clients now to sit here, so I understand -- I am not saying you didn't work real hard over the weekend or last night and all of that, but I think it's -- we have got it get it done otherwise we may need to work during some of the breaks.

In terms of the structure of how things will go today, I am not going to take opening arguments. We're going -- the record is what I am going to look at here, so things have to be put on the record.

If there -- again, if there are some things that can be disposed of quickly because you have agreed, I will take those things first. For those of you who are objecting and don't need to be here the whole time and only have a very minor in terms of time, not in terms of what they mean to you, don't misinterpret what I have said, we can discuss taking those up quickly if that would allow people to leave and not, again, spend their client's money sitting here listening to things that don't concern them for the day.

Why don't we take -- it says 8:45. I will

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tell you what else this time can be used for, though, for the rest of you, it is highly recommended that you coordinate a lot of these objections and otherwise are duplicative. I strongly suggest you coordinate some of this so that you have as few spokesmen as possible. That doesn't mean people can't talk, but what it does mean is that you can -- other people can talk about how to present things to me today so we don't have a duplicate of questions and ultimately arguments if we get there.

With that in mind, we will take a half an hour break. I would ask Ms. Starr or someone from her team there to let us know at 9:15 where you are or maybe 9:10 or 9:15, someone can let us know. If you only need a half hour, hopefully that means that you are close and so we will take a break.

We will also need -- why doesn't everybody step in. Let me see how many chairs we need. Let me get a feel for that because we will manage. Is there -- okay. It looks look like we need one, two, three, four, five, six -- eight chairs. We will figure it out.

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At least I know what we need. All right. I don't want to take up your time on logistics.
Go ahead and talk and we will see you in about half an hour. It looks more like closer to 20 after. Of course, if you resolve it quicker, let me know.
MS. STARR: Yes, thank you, Your Honor.
THE COURT: Thank you. All right. See you soon.

(A recess was had in the proceedings)

THE COURT: All right. We're back on the record. We need -- any time anyone is talking due to the crowd in here and the electronic recording system we have, you do need to walk up to the lectern.
So I will let Ms. Starr come up to the lectern and report where we are.
MS. STARR: Your Honor, conversations are still happening, so I don't have anything to report, so what I would suggest to Your Honor is that we start with putting on the record the resolutions that we

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received (Unintelligible) with some of the objections.
I am going to ask my colleague, Ms. McGreal, to describe those to you and that way hopefully some people can leave once their objections are resolved on the record.
THE COURT: Right, and that's what I recommend, we get all the resolutions out of the way first.
Ms. McGreal, why don't you come on up here.
MS. MCGREAL: Good morning, Your Honor.
THE COURT: Good morning, Ms. McGreal.
MS. MCGREAL: Michelle McGreal, Davis Polk & Wardell on behalf of the debtors.
Your Honor, I am going to go through the black line of the order that we filed yesterday afternoon. I have some copies, if that will be helpful.
THE COURT: Yes, I will take a copy. Thank you.
MS. MCGREAL: So I'll be

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referring to the pages in the black line, so sort of towards the end of that packet that I just showed you so is that we can see clearly some of the resolutions that we were able to achieve in the weeks leading up to the hearing.
I think Your Honor mentioned the resolution with Caterpillar which we were able to achieve. I think that starts on Page 78 of the black line. It's Paragraph 62.
Your Honor, in that paragraph we added a new section where --
THE COURT: Hold on just a minute. Paragraph 78?
MS. MCGREAL: Paragraph 62. It's Page78.
THE COURT: All right. Hold on. All right. Now I am there. Go ahead.
MS. MCGREAL: So this paragraph is a result of conversations with a number of parties and it resolves a few issues with a few of the parties, probably not completely.
With respect to Caterpillar, we did add that any asset that involves the assumption

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or rejection of a contractor or lease between the debtors and Caterpillar that asset would be deemed to be over $1 million such that notice would be required.
I know Your Honor mentioned previously that notice was something that you may want to discuss or that you have an issue with. With respect to Caterpillar, they did explicitly object on that basis. We agreed, after speaking with them, that we would provide notice whether or not the asset was valued under a million dollars or not. We would give them notice. We did add that section in.
That paragraph, you can see, has a few different sub-clauses. There are other assets that even if they are under a million we would give notice, things like -- things that would pose an environmental hazard, real property that involves release of hazardous waste and assets that have a statutory lien asserted on them. They would all be in a bucket that would require notice regardless of the value of the remaining asset.
THE COURT: All right. Very

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good. Is that the only -- for Caterpillar --
MS. MCGREAL: There are a few more Caterpillar specifics that I will just get to which resolves their objection completely.
THE COURT: Go ahead.
MS. MCGREAL: We get to Paragraph 66 where we talk about rejection procedures on that very next page and we have provided additional time for Caterpillar leases, and when I say Caterpillar I'm referring to Caterpillar and Progress Rail.
We have provided 14 days instead of the five business days that we had in the procedures.
And then we have added in one reservation of rights for Caterpillar on page -- on Paragraph 80 or, sorry, Paragraph 79 on Page 84 and we just say that nothing in the settlement agreement or the procedures limits any party's rights or obligations under any of the leases between the debtors and Caterpillar.
So with that I think that's resolved Caterpillar's objection. I just will go

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through the rest and maybe we can hear from the objectors or would you like to --
THE COURT: I would like to hear from Caterpillar next. It's on my mind and I can remember it.
Ms. Clark or whoever is going to come up.
MS. HULSEBOS: Good morning, Your Honor.
That does resolve our objection --
THE COURT: (Unintelligible).
MS. HULSEBOS: Elizabeth Hulsebos for Caterpillar Financial Services Corporation and Progress Rail.
There was one additional change that was added to the black line here that I wanted to just quickly mention, but yes, our objection has been resolved. It is with respect -- in Paragraph 66J, reserves our right with respect to a Letter of Credit that Caterpillar Financial Services has against the debtors, so that was just the final change that resolves our objection.
THE COURT: All right. And with that mind, you withdraw your objection --
MS. HULSEBOS: Yes, we do.

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THE COURT: -- for the record.
MS. HULSEBOS: Yes.
THE COURT: Okay. Thank you.
MS. MCGREAL: Your Honor, we then had on objection from Wright County which we have also resolved. That's at the very end on Paragraph 81 and this is really more in the way of a reservation of rights.
The objection was limited and they wanted to make sure that the -- nothing in this order or the procedures affected their rights under a loan agreement that they have with the debtors. The debtors and Wright County have unsecured TIF bonds and nothing in here was intended to affect the rights of Wright County understand any of those documents.
Additionally, we had listed in our schedule of remaining assets the Wright County bonds. They wanted to make sure that we could not transfer them without complying with securities laws, which we were happy to make clear on here that we would not be doing that.
With that, I think that also resolves Wright County's objection. I am not sure if

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they have put in an appearance today.
THE COURT: Is anyone in here representing Wright County, either telephonically, and I didn't ask for telephonic appearances, I suppose, but either telephonically or in the courtroom?
I am not hearing anyone, but you've represented to the court that it's been resolved, that you have been in contact with their -- with them.
You might during some breaks send them an email or text just asking them to confirm that they will withdraw the objection, otherwise it sounds like it's resolved.
MS. HULSEBOS: Thank you, Your Honor. We will do that.
The last resolution, which we actually were able to just reach in the hallway now relates to MDNR and I will go through where we have resolved their objections.
It's -- it's mixed in with some of the resolutions that we have made for the EPA, but I understand the EPA still has an outstanding objection, so I just want to parse through that for a minute, so just

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forgive me if I take a second here.
THE COURT: Take your time.
MS. HULSEBOS: On Page 78, Paragraph 61, we have added language that will require us to put in to any sale notice various information about any -- any permits we have and any descriptions of environmental contamination related to remaining asset that we're proposing to sell, so to the extent that we know of any contamination or threats of eminent and identifiable harm, that remaining assets presents, we would include that in a sale notice or abandonment notice so that would be detailed.
The next -- the next paragraph is where I pointed out that we have added that any remaining asset that relates to a release of hazardous waste or the abandonment of -- or the abandonment of the asset would create an environmental hazard, we would agree that that will be deemed to be over a million dollars so that notice would be provided to all parties regardless of whether the debtors actually value the asset as less than that.
At Paragraph 63 we have added in a

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clarification that in addition to the notice that we have proposed here, we will provide notice of a sale or abandonment to any state or federal environmental regulatory authority to the extent it's otherwise required by law.
We then added a very long paragraph at -- on Page 84. It's Paragraph 78. This is sort of the environmental paragraph, if we can call it that. It really lays out --
THE COURT: I'm sorry, paragraph, what's the number.
MS. MCGREAL: 78.
THE COURT: Thank you.
MS. MCGREAL: Yes, it takes up a good portion of the page there on Page 84.
THE COURT: Yes.
MS. HULSEBOS: This is where we make clear that nothing in the order enjoins or otherwise bars any liability to the United States if the liability arises after the effective date, if the liability is not a claim as defined under the Bankruptcy Code. Any right of set off or recoupment by the United States or any state against the debtors, any police or regulatory action of

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the state or the United States, any environmental liability to a purchaser, any liability related to certain mining permits.
And then had at the end of the section that we would not obligated to comply with Section 93.003 of Minnesota State law and that section, as you -- as Your Honor may have seen the MDNR objection, relates to keeping the operations in salable condition for two years and the debtors had real concerns over that provision in the event that we are not able to sell the assets as a going concern or to a purchaser that wants to operate the assets, we have concerns that this might preclude the sale of those assets or preclude the sale of the assets in a piecemeal fashion because it may not be considered operating condition and so the debtors had some concerns about that as well as concerns that that statute was not really related to any environmental issues, but really related to keeping jobs and at that point that did -- the intent of the statute may not be honored.
So we have talked MDNR and we have just

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had a good conversation in the hallway and what we have decided to do is change the language here which says we don't need to comply and just have it say that nothing here is a determination about compliance or non-compliance.
We're hopeful this will actually never have to be an issue and so we don't actually need to decide that now. To the extent it is, we'll bring that before Your Honor again.
I think with that, MDNR's objection should be resolved, but I know that they are here in the courtroom so they can --
THE COURT: Okay.
MS. TIEN: Good morning, Wendy Tien on behalf of the Minnesota Department of Natural Resources.
THE COURT: Good morning.
MS. TIEN: How are you?
THE COURT: Fine. Thank you.
MS. TIEN: Great.
Yes, I think Ms. McGreal summed it up accurately on behalf of both parties. We did have a good conversation in the hallway.
The issue regarding 93.003 was the last

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outstanding issue we were not able to resolve before today's hearing and we did have a conversation in the hall that related to the DNR's intention with respect to that statute. It really for our purposes doesn't relate so much to maintaining the property in salable condition and interfering with the debtor's ability to dispose of those assets to a potential buyer, but more with the health and safety issues.

So with that amendment to the 93.003 language and kicking the can down the road indefinitely, if you will, all our concerns are resolved.

THE COURT: Okay. And you'll withdraw your objection?

MS. TIEN: Yes.

THE COURT: Or you are withdrawing your objection?

MS. TIEN: Withdrawing our objection.

THE COURT: Okay. Thank you.

MS. TIEN: Thank you.

THE COURT: You can go home. Good.

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MS. TIEN: Or not.

MS. MCGREAL: Your Honor, I think that is likely all we have to put on the record for now and just so that we are all on the same page I think that leaves us with the bondholder objection which we are working very hard right now to resolve the objection of the U.S. Trustee, the objection of the mechanic's liens or the statutory lien claimants, the objection of the EPA and the objection of John J. Morgan.

THE COURT: All right. Very good.

MS. MCGREAL: So, Your Honor, I think we still do need additional time before we can present another resolution, but we're happy to proceed in any way Your Honor wants at this point. I think there's some time before the 10:00 break.

THE COURT: All right. Are you talking to all those other parties, in other words, and if not, can any of those -- I know the bondholder one can't be taken care of even argued earlier, but can the EPA one, for example, if not resolved, be taken care of if

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the argument is in under after fact issues, in other words, on the EPA objection or can we hear that one earlier and let them go back and save the taxpayer some money there?

MS. MCGREAL: I am not sure if we need our witnesses for that.

THE COURT: You can talk about that. You don't have to answer the question right now, but I am throwing it out there. They seem to have a narrower objection, so whether you really need -- if it's largely procedural and legally based and can be resolved, let them make their record in what they want to argue. If there are no facts that are necessary, we can -- I am throwing it out there for you so we can get someone out of here.

MS. MCGREAL: Just a moment, Your Honor.

THE COURT: You can confer. Of course, you can.

MS. MCGREAL: Yes, I think, Your Honor -- we think this something that could be argued based on legal issues and something we could approach -- we could discuss now,

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assuming the EPA is ready and willing to have the conversation, but obviously we would reserve our rights with respect to this argument that if -- factual issues do come up, that we're able to address in the testimony that's going to be coming in today.

THE COURT: Well, why don't you talk -- you don't have to do it right this second, but why don't you talk with them and determine whether or not there are any factual issues that you have with them. Between the two of you you should be able to figure that out.

It sounds like from their objection and from the language you've been putting in here that's largely a language type thing, in other words, largely a legal argument, but not factually, but I could be wrong in my reading of their objection and your responses.

You don't have to decide that at this moment, but we're going to have to take a break at 10:00 because I did have a pre-existing hearing that I will handle in chambers, but that will be brief, that

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hearing, so that would be a time between the -- maybe the three of you one of you can talk with the EPA and see if you can't get either them resolved or narrowed down to such a point that we can get them on their way.

MS. MCGREAL: We're more than happy to, Your Honor.

THE COURT: All right. We have about ten minutes.

Ms. Starr, you can come up to the lectern.

MS. STARR: It might make some sense, Your Honor, just to talk a little bit about the -- what we would propose to do today. Obviously we got the message no opening arguments, so we won't -- we won't spend time on that.

What we would propose to do today is to first have the debtors put on testimony with respect to the GSA, explaining why we believe the GSA is, indeed, in the best interest of the debtor and, indeed, why we have at this point literally no other alternative than the GSA.

Our expectations will be putting on two witnesses, Your Honor. The first witness is

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Mr. Mark Buschmann. Mr. Buschmann is our -- is from PJT, the financial advisor to the debtor. He will be -- he will be addressing the sales process.

You may recall that there -- in the various objections there are objections to the propriety and nature of the sales process, so he will be explaining why it was a full and fair process.

We will then put on a second witness. His name is Mr. Mike Talarico, Michael Talarico. Mr. Talarico is the chief restructuring officer of Magnetation, LLC and the primary decision maker for the purposes of the GSA, the motion that's before Your Honor today.

And Mr. Talarico will be presenting testimony not too much about the sales process, but really about the GSA, the GSA's terms, how they were negotiated, why they are fair, why the compromises that were made were in the debtor's best interest, and why this is appropriate for the debtor, and that would be the factual testimony that we would intend to put on on behalf of the GSA.

It's my understanding, and this is now

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based on representations that have been made to me, that AK Steel, another proponent of the GSA, will be putting on testimony as well from a factual witness. I do not believe standing here today that there will be any other factual witnesses appearing as proponents for the GSA.

On the other side of the dispute, we have received notice that the Ad Hoc Committee will be providing the witness who will be testifying with respect to their objection to the GSA.

In addition, we received notification from Mr. Ratelle who was a one of the lien holders claimants that he has a witness that he may call today. I do not know whether he actually will or not, but that's the notification we have received.

We have not received and we asked whether anyone else was planning to put on a factual witness today, so that's the list as far as I'm aware.

We have certain objections to the scope of Mr. Ratelle's witness testimony, but I am not sure that that makes sense for me to raise

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and argue right. Maybe we'll wait to see --

THE COURT: You're right. You're right. It does not.

MS. STARR: We will wait to see if the testimony happens.

THE COURT: That's right.

MS. STARR: It would then be our expectation once we have completed putting in the factual case certainly the debtors would ask for an opportunity to address Your Honor and argue the merits of the motion.

THE COURT: And we will see what time it is when we get there because we are going to go through this day. As I say, we will take breaks. This is not an endurance test, but we will be doing that.

All right. Anything else you want to add?

MS. STARR: No, Your Honor. That's --

THE COURT: That's the procedure?

MS. STARR: Yes.

THE COURT: All right. I do have one -- you may be seated.

MS. STARR: Thank you.

THE COURT: I do have one sort of

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pleasant thing to have to handle, but I am going to do it. There were a number of untimely responses that were filed. I point out the local rules here. It says nine -- Local Rule 9013.2, any entity opposing a motion and wishing to be heard, and that says and wishing to be heard, shall file and serve a response. I won't go with what that response needs to say, but they need to do that.

And then Rule 9006.1, any responsive documents shall be filed and served by delivery or by mail not later than five days before the hearing date. I entered an order asking for all responses to be filed by the 19th of September.

Then I entered another order recently, and this would have been on the 23rd and the 23rd was a request for continuance. I granted that continuance. I said in accordance with the court's previous order, no further objections or responses -- responses to the debtor's motion will be considered. Those -- unpleasant, I don't like doing it, but those were not advisory and so anyone wishing to be

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heard who did not file a response on time, and there are a lot of people in this room who may wish to be heard, are going to have to ask for leave of court, but the good news is I can't believe there's not a position in this the courtroom that's not being argued by someone who has filed a response on time.

What I recommend you do is coordinate with those who did file responses on time and work with those parties to get your points across.

I won't go through the ones that were filed, but I got a bunch of responses that were filed not only after the 19th, not only after I said I wouldn't take them, but they were also filed not even within five days of this hearing. They were filed last Friday.

So not being critical of people for that, sometimes you don't think of it, but we do have rules. We do have -- I did enter an order on this. This is a large hearing and it's going to be handled in an organized manner, so I suggest during these breaks that people work on that.

You can ask for leave of court, but I entered -- I entered the orders very specific

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on the time and there were parties who I would imagine struggled to get their responses out on time, so that -- that's something you need to consider also when you talk about what's going to happen today.

Otherwise, I hope the parties can continue to talk during the break here and maybe get more of these things resolved. I look at the EPA situation. It seems certainly resolvable or can be kicked down -- the can can be kicked the road as well. In other words, it seems to me like you did with the stay, that there's some issues that don't need to be decided definitively today and that people are projecting what might happen in the future. Why not kick those down the road, let the EPA go home today if that's a possibility. I am not looking at the debtor and saying that. Both sides, I am saying, should consider that kind of an option during the break.

So what I will do is we will take the break now. It's five of 10:00 and we will reconvene at 10:15.

We will do as Ms. Starr has suggested and,

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in fact, that is the order. They have the burden of proof. They will present their witnesses first.

Again, I strongly recommend that parties coordinate cross examination so we're not getting repetitive questions. Those of you who are opposing with similar grounds, mechanic's lien people, they filed joint briefs, hopefully one spokesman can handle most or all of it.

Likewise, there are overlap in some of the other objections as well. Hopefully the parties can coordinate that to keep things as organized as possible here, simple as possible, and allow me to make the most sense out of all this.

Again, I appreciate all the hard work people have put into this. That's awfully clear that you have done that and it's awfully clear you're zealously representing your clients and I appreciate that and I admire it. We have got very good attorneys in this room. I am sure they can coordinate some of these issues that I have mentioned to get all the points across in an organized

manner in a way that makes it easier for me to understand things and decide this ultimately.

So it's about five of. At 10:15 we will reconvene. Hopefully that will give some time to resolve some of these things. We'll break for lunch as well and during lunch people can also try to resolve some of these things.

I thank you all very much. We will take a break and I will see you at 10:15.

(A recess was had in the proceedings).

THE COURT: All right. Ms. Starr.

MS. STARR: So I am afraid, Your Honor, that I don't have any further resolutions to report at this point. You know, I think there's some very productive discussions going on, both with the EPA and the bond holders and maybe we'll have something to report, but not right now.

THE COURT: Okay.

MS. STARR: You know, I think

Your Honor this is not the -- this is not the motion that we had hoped to be before you with. I think we had very much hoped and tried and sweated blood to try to find a solution for this company that would allow an emergence, but we have just been unable to do so despite the very best efforts of everyone involved.

And so the GSA -- in addition, the company is facing a liquidity crisis and will put on testimony today for Your Honor demonstrating that the company is not going to last very long, so the GSA at this point is our only and very best option.

What we would propose to do is to begin by calling witnesses. We'll start with Mr. Mark Buschmann from PJT.

THE COURT: Okay. Sir, could you stand over here to my right and raise your right hand. You will be sworn in.

MARK BUSCHMANN

A witness in the above-entitled action, after having been first duly sworn,

testifies and says as follows:

THE COURT: All right. Sir, you may take a seat over in the witness chair. Once you're seated, Sir, please state once again into the microphone your name and spell it for the record.

THE WITNESS: Sure. It's mark Buschmann, B-U-S-C-H-M-A-N-N.

THE COURT: Okay. Thank you, Sir. Ms. Starr, whenever you're ready.

EXAMINATION

BY MS. STARR:

Q. All right. Good morning, Mr. Buschmann. Let's start by letting everybody know where you work.

A. Sure. I'm a partner at PJT Partners.

Q. And what is your role at PJT Partners?

A. I'm a partner in the restructuring and special situations group.

Q. And, in general, what is the business of PJT?

A. PJT is a financial advisory business. We

have three main advisory groups. The first is our restructuring practice, where I work. The second is an M&A practice, and the third is a business that raises funds for hedge funds and private equity businesses.

Q. Now, Mr. Buschmann, do you have experience in advising distressed company, creditors, boards and others in connection with restructurings and bankruptcy?

A. Yes, I do.

Q. How many years?

A. I started at the predecessor to PJT Partners, which was Blackstone Group, in 2001, so I have been doing restructuring for well over 15 years and investment banking for over 18 years.

Q. All right. And how many restructuring matters have you worked on since joining first Blackstone and now PJT?

A. Probably in excess of 30.

Q. All right. And can you just give us a list of some of your larger and more notable assignments?

A. Sure. We are hopefully completing on Wednesday (Unintelligible). I'm currently

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also working for Miranda. I have been the advisor to Patriot Coal in their first restructuring. I have worked and sold the L.A. Dodgers. I have worked for Delta Airlines in their restructuring. I worked for Williams Communications, their sale and Chapter 11. I have worked for the Tribune Company on the creditor side. Those are some of the more --

Q. So we could safely say you are very experienced in the area?

A. It's been a busy time.

Q. Okay. Has PJT been engaged by the debtors in connection with Magnetation, LLC's restructuring efforts?

A. Yes. We have been engaged by them since January of 2015.

Q. All right. And Mr. Buschmann, what was PJT engaged to do on behalf of Magnetation, LLC?

A. Our initial assignment, which a long time ago was to help Magnetation find financing in an out of court restructuring process.

Q. Okay. And did that assignment develop over time?

A. Yes. It developed -- the out of court

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financing process failed, just getting the complexity of the iron ore markets and with Magnetation, so we proceeded to file the company for Chapter 11 in May of 2015.

Q. Okay. Have the debtors made --

MALE SPEAKER: I'm sorry. Is the mic working?

THE COURT: Yes. I was going to ask the same thing. Is he being picked up?

THE WITNESS: Sorry.

BY MS. STARR:

Q. That's okay. I heard you, so I wasn't worried about anybody else?

A. (Unintelligible).

THE COURT: If you can, speak up, because I noticed the same.

THE WITNESS: Yes.

BY MS. STARR:

Q. All right. Mr. Buschmann, has PJT assisted the debtors in any efforts to sell -- sell the business?

A. Yes, we have.

Q. Okay. And what was your role in that process?

A. So, first of all, I am a team of three other

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individuals, and so we are the primary investment banker who's selling the company, which means that we contact potential buyers. We help them with information to help them do due diligence, go through NDA process, the non-disclosure agreement process with them.

It then -- God willing, when we come to the deal we negotiate that deal on behalf of the company.

Q. All right. And at the debtor's, who were your main contacts with respect to that sales process?

A. Sure. It's Mr. Talarico and Mr. Beckman at FTI. Then we also interfaced with the company's management.

Q. Okay. And just so the record is clear, who is Mr. Talarico?

A. He's the CRO of Magnetation, LLC and also a member of the independent committee.

Q. Okay. And is Mr. Talarico along with Mr. Beckman and the independent committee, are they authorized to speak on behalf of the debtor?

A. Yes, they are.

Q. All right. When did the sales process for

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Mag, LLC, and if I call it Mag, LLC you will understand what I mean?

A. Yes, I do.

Q. Okay. When did the sales process begin?

A. It began in earnest in early 2016. We had received in late 2015, early 2016 two proposals, one that we had actually initiated, another one that was inbound. This was during the time of the Pellet Purchase Agreement litigation that had gone on and we were still under the RSA with the bondholders, so that was when the first inklings of outside capital started to come forth for the company.

The sales process then began in earnest after the termination of the RSA and our need to emerge from bankruptcy.

Q. So let's go backwards just a moment to clarify something in your answer. You mentioned something called the RSA?

A. Yes.

Q. What is the RSA?

A. It is an agreement that is signed with the bondholders. It's a restructuring support agreement, so RSA. Again, when we filed for

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Chapter 11 we signed that document on the eve of filing. It was intended to -- as the word says, provide support to the company for the emergence of the company from Chapter 11, meaning that the bond holders were signing up for it, were supporting the restructuring efforts of the company and it's eventual emergence.

Q. And did the bond holders make representations with respect to their support of the company during the course of the assumption trial in December of 2015?

A. Yes, they did.

Q. Okay. Now, during the period of time that the RSA was in place did the debtors pursue a sales process?

A. Would you mind repeating the question?

Q. Sure. During the time that the RSA was in place, so up until January of 2016 when it as terminated did the debtors have any reason to pursue a sale process?

A. No, because the thought was always that most assumption of the PPA that the bond holders, the Ad Hoc Group of bond holders which is a combination of the DIP holders, were also

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large bond holders, were going to fund the company and be its eventual owner, so there was no need at that time to look for an eventual buyer.

Q. Okay. Now, again, in this same time frame, in December of 2015 and January of 2016, did the bond holders or you call them the bond holders, I think everybody understands what you mean, indicate to you that they were discussing a resolution of Mag, Inc.'s -- I should say Mag, LLC's business with AK Steel?

A. Yes, during the time of the Pellet Purchase Agreement assumption hearing, I guess, right before, we were informed by the financial advisor of the Ad Hoc Group that they were as an ongoing dialogue between this ad hoc bond holders and AK to, in effect, terminate the PPA and wind down the business and receive a recovery that way.

Q. Now, just again, so we have got all our terms straight, you mentioned the ad hoc group's financial advisor.

Who's that?

A. That's Houlihan Lokey.

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Q. Now, going back forward again, did there come a time at which the RSA was terminated by the bond holders?

A. Yes, so January of 2016 we received notice that the bond holder group was terminating the RSA.

Q. And did the bond holder group communicate with Mag, LLC its expectations with respect to looking for another source of financing or support for the company?

A. We were told that the -- again, this is -- the Ad Hoc Group is a combination of the DIP holders and the bond holders, so they were the source of funding for the company by the DIP. It was made clear to us to not look to them for future funding, that they had funded enough, and were asking us if there was going to be additional funds that we should seek it elsewhere.

Q. All right. What did Magnetation do after receiving the termination of the RSA and the message that you just described from the bond holders?

A. Sure. We had a number of paths that we were pursuing. Again, we were trying to, on the

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one hand, see if there was peace to be found with AK Steel.

We also were looking for an alternative customer. One customer had a contract that they felt they were not going to get supply from as that entity was going through its own financial difficulties and so they engaged in the conversation with them to replace our existing supply agreement with AK.

Q. And was that effort successful?

A. Unfortunately, it was not.

Q. In addition to the options you have just described, talking to AK and seeking an alternate customer, did the debtors commence a process to market and sell the company?

A. Yes. So we continued our conversations with the two parties that emerged in late '15, early '16, and then began a full blown M&A process thereafter.

Q. All right. Were the debtors at that time open to considering any and all offers to purchase the business?

A. Yes, we were.

Q. And would that include offers that could potentially have required cramming up

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Magnetation's senior secured lenders?
A. Yes.
Q. Now, what kinds of entities -- I am not asking for all the names, because there are probably too many, but the categories or types of companies that you contacted with respect to a potential transaction?
A. Sure. It was a combination of financial buyers, so the private equity funds, hedge funds. We also spoke to strategic buyers, which included actually competitors of AK Steel.
Q. All right. And how many parties in total did PJT contact on behalf of Magnetation, LLC in connection with soliciting potential investment?
A. In excess of 40. I believe around 44.
Q. And of those parties that you approached, how many of those were willing to sign NDAs or non-disclosure agreements?
A. Sure. That's usually the first step if you have any kind of interest to take a peak, if you will, so 26 or so, around 26 signed an NDA.
Q. And of those parties who then submitted --

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signed the NDA and took the proverbial peek, how many of those parties then took the next step and submitted either an indicative proposal or some form of non-binding term sheet?
A. Sure. Of the 26, we received four non-binding indicative proposals, again dating back to the beginning process.
MS. STARR: And, Your Honor, we're going to discuss these -- into proposals. We're going to -- we're not going to disclose the names of these entities given that they have signed NDAs and are confidential, but I think we can discuss the substance and the information that's really relevant to this motion without needing to somehow try to use specific names.
BY MS. STARR:
Q. Mr. Buschmann, of the four, who are the four who submitted at least indicative or non-binding type proposals?
A. Sure. The first is a private equity fund, actually a joint venture with a large private equity fund that is focused on buying distressed metals and mining concerns.

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The second entity I will put at this point in the strategic category. It is an outfit that has been actively pursuing acquisitions in Chapter 11 of various coal and it steel assets.
The third was actually an investment banker who did not have capital of his own, but performed the term sheet that was going to be the basis of going out and seeking money from wealthy families in the Minneapolis area or the Minnesota area.
Finally, again, multi-financial player. A consortium that was being formed of various wealthy investors and at one point potential Chinese strategic buyers that were going to form a consortium to buy the company.
Q. Now, of the prospective buyers who signed up the NDAs but didn't ultimately submit even a non-binding term sheet, did any of those parties tell you, PJT, why they were not interested in going forward?
A. Yes. There were a number of reasons and the sale of Magnetation obviously was quite difficult. Let's just walk through all the various pieces.

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One, the iron ore market is one that --
MR. COHEN: Excuse me, Your Honor. I object. This is hearsay testimony.
MS. STARR: Mr. -- Mr. Buschmann is simply testifying with respect to conversations he had with prospective buyers as to their concerns with Magnetation.
MR. COHEN: Mr. Buschmann is testifying as to out of court statements for the truth of the matter asserted.
THE COURT: It's -- it is hearsay. I haven't heard any exception here. However, it can come in as what he thought to be the case at that time and I will take it -- I will give it the proper weight that it deserves according to the objection. The objection is sustained, but if the question is asked in a manner that goes to what his impression was, his present sense --
MS. STARR: Sure, sure.
THE COURT: I can allow it.
MR. COHEN: Thank you, Your Honor.
BY MS. STARR:
Q. We'll try again, Mr. Buschmann.

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What was your understanding, your impression, of why some of these buyers who didn't go forward to the term sheet stage were unwilling to go forward?

A. Sure. So starting off with the industry, the iron ore industry is one that is obviously in a bit of financial distress and one that is very difficult for a lot of the funds to have gotten comfortable with.

The second piece is just the structure of the company which is it's a sole customer based business. It is one customer and obviously that customer is one that we have had ongoing litigation with and have an outstanding appeal as well as ongoing issues regarding the contract that are still not settled.

Third, it's a very complex negotiation. There are many parties involved here and so you have obviously the senior secured creditors. You have the group of ad hoc bond holders. You have AK who is obviously an important party for business going forward, and then you have the structure with Mag, Inc. where the salaried employees as well as

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the technology is technically owned by Mag, Inc. and is licensed out to Mag, LLC.

For a lot of the buyers they were seeking consensual deals with all these parties and it became very difficult to reach that.

Q. Was it --

A. The --

Q. I'm sorry. Go ahead.

A. The last thing which, you know, I think was sort of an underlying issue that (Unintelligible) was why aren't the existing creditors performing the exit. You have a lot of hedge funds who have the funds to invest in the company, they are choosing not to, so it was always the sense of why aren't they doing it, why am I being asked to do this.

Q. Now, of the buyers, was there ever a buyer who in your impression refused to go forward with a negotiation with Magnetation solely because the terms of the Pellet Purchase Agreement had not been disclosed?

A. No.

Q. Did a lot of the potential bidders ask you to see the Pellet Purchase Agreement?

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A. Not as many as, frankly, I would have thought. The reason being that the main issue in the settlement process was how do you deal with one customer who is unhappy. You know, the buyers have access to a financial model that we prepared as a company, so they had a sense of -- given sort of trends in the IODEX, which is the index of iron ore pricing, what kind of financial performance is possible, but for them they -- a lot of them wanted to engage with AK directly and, frankly, write a new contract was in their mind having an unhappy customer forever is not something that was really terrible from an investment.

So frankly, the existing contract is interesting, but for most of them, I think, they were trying to engage with AK to get to a new contract.

Q. Now, have any of the prospective buyers of Magnetation, LLC been provided access to the PPA? When I say PPA, I mean the Pellet Purchase Agreement.

A. Yes. AK agreed subjected to signing the NDA that parties could receive the contract, so

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one party signed an NDA. Another one is hopefully currently still trying to sign an NDA.

Q. All right. Circling back to the four indicative term sheets that you described earlier, let's start with the first party who you identified who -- what was the negotiation process with that party?

A. Sure. You mean talking early '16?

Q. Yes. Let's start with January of 2016.

A. Sure. So again, the first party came forward. They were again, not saying names, but it was the private equity JV type structure. They were, again, hoping to do a consensual deal among all the parties.

Initially, we understood that they did not require a consensual deal with AK, so they had proposed a transaction whereby they would basically pay down the JP Morgan claim a certain amount, give them a short-term note for the remainder, and then have the Ad Hoc Group co-invest with them for the emergence cost at the ad hoc's option.

That deal ended up falling away when, again, that entity became uncomfortable with

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the risk of having the sole customer and AK not being on board with that deal.
Q. Okay. And were representatives of the Ad Hoc Group made aware of the discussions that you were having with this private equity party?
A. Yes, and they had their own discussions with them because, as I mentioned before, they were offered a potential right to co-invest.
Q. Okay. In fact, did PJT on behalf of the debtor share copies of the proposals with the ad hoc group's advisors?
A. Yes.
Q. Okay. Now, in general, not just with respect to this JV party, but in general, did you communicate with Houlihan Lokey, the ad hoc committee's financial advisors, during this sales process that commenced in early 2016?
A. Yes. I would say that we went in and my firm had a very good relationship. Mr. Vescio, who is the lead banker of Houlihan and I spoke quite frequently and so we had standing calls with them on an -- to sort of block the operations of the business because there was a number of times when the business had some operational hiccups, so we established a

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weekly operations call that was attended by members of Houlihan, I believe even at the times, and Milbank and Mr. Vescio and I obviously discussed a number of issues quite frequently at times. Other times maybe it was less frequently, but whenever an issue came up, we were always in discussions.
Q. And when the advisors to the Ad Hoc Group reached out to PJT asking for information about the company or about prospective buyers, did PJT respond to those questions?
A. Yes, we always did.
Q. Okay. Now, did the financial advisors to the Ad Hoc Group give you any input into the sales process?
A. Yes, they did. When we established our target list or our contact list of parties to go out to, we did receive a number of names from Houlihan as well that were names that -- I'm sure that we had some overlapping names, but there were a number of names that wanted to add to our list, so we added those parties as well and reached out to them as well.
Q. Okay. Is there any party that was ever suggested by the Ad Hoc Committee's financial advisors that you did not reach out to?
A. No.
Q. Now, was it ever your understanding prior to September of 2016 that the Ad Hoc Group wanted you to reach out to AK seeking for permission to share the PPA with specific buyers or potential buyers?
A. No, that was not raised.
Q. Now, in addition to involving the Ad Hoc Group in the various discussions that were going on with respect to potential sale of the business, did PJT ever reach out to the financial advisors for JP Morgan?
A. Yes. There came a time when, again, it was in the spring of 2016 when JP Morgan hired the firm of Alvarez & Marsal to be their financial advisor.
This was not a time when JP Morgan became concerned about the lack of progress in the sales process and the ongoing operational issues that we had faced and the liquidity profile that was -- again, the company never had a lot of cash, but it was, again, in a state where they weren't comfortable, so when Alvarez & Marsal got hired, then we engaged

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with them on both the diligence of the business and then ongoing dialogues with them on the sales process and the path to go forward with Magnetation.
Q. All right. Now we talked about one of the four (Unintelligible). Let's talk about the next one you described. This is the entity that was engaged in purchasing various energy businesses, including coal businesses.
A. Right.
Q. Can you describe what the negotiations were with that entity?
A. Sure. There are actually two. There was an initial outreach from them, as I mentioned before, in late '15, early '16. At that point the offer that was put forth by this group was viewed as not being adequate to the Ad Hoc Group.
There was some concerns about the ability of that party to fund the transaction. They had been successful in a number of deals and buying assets without putting up cash, essentially assuming liabilities, so there was some distrust there.
That party became actually rather busy on

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the other deal that they were closing and then emerged in the summer, so a number of months later, with another effort to try to buy the business.

Q. Okay. When the same entity re-emerged in the summer to re-engage in efforts to purchase Magnetation, LLC, what was the course of the negotiation?

A. Sure. Again, they put forth the term sheet. We obviously helped them through all the diligence. We pressed them on the financing source. I think we never really received a committed financing from them. It was told to us that it was sort of coming and the date never really came.

At some point they disengaged with us, and as we understand it, they are now more focused on buying assets in a wind down as opposed to a going concern.

Q. And what was your impression as to why ultimately this party disengaged from the negotiation process? They never actually made a bid, so I think that's maybe just we would say their offer, but let's say the negotiation process?

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A. Again, it was just the complexity of the deal with the various pieces and AK being probably a main piece of that. There was just the realization that potentially a deal with AK may not be possible here, so that became a hindrance to them going after the going concern.

Q. Now, you described there were two other parties. Let's talk about the third party you mentioned. I believe that was the investment banker who didn't actually have any money, but who was looking to potentially put together a group of investors.

Can you explain what happened with respect to that approach?

A. Sure. The party did, what I would say, compared to the others very little diligence, put forth a term sheet. As I mentioned before, made an effort to try to find a deal. He was a banker. He didn't have his own money, but was trying to cobble together a bunch of investors.

At the end of the day he asked that any deal within be contingent upon there being full settlement of the issues with AK which

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we from day one had told him that our assumption motion in bankruptcy court was being appealed and that that appeal had a timeline that we could not dictate and that we obviously had upcoming liquidity issues, so any deal would have to occur in the face of the potential of the appeal not having been decided upon and the chance there could be future appeals of that appeal as well as there were still ongoing issues in regards to aspects of the contract, some disagreements on pricing and the like on the audits that we will not have any clarity on by the time the deal has to close.

Q. When you say pricing issues, are you referencing the purchase price adjustment litigation between AK and Magnetation, LLC going on in this court where AK was seeking approximately $30 million in price adjustments?

A. Yes, that's the one.

Q. Okay. Now, let's talk about the fourth party, and this is the consortium of investors that you referenced before.

What has been the negotiation history with

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that entity --

A. Sure.

Q. -- consortium?

A. This is a party that came forth in the latter part of August. We had told them quite clearly that we were facing a liquidity issue and laid out with them a timeline that we thought would work to get them to, you know, a potential transaction in enough time.

They immediately -- it was lead by one person. Immediately very active in doing diligence. Throughout that time he was pulling together a number of investors to be part of his consortium.

Over the timeline of the negotiation, the different parties that were the investors changed, some came in and dropped out and so there's been an ongoing process by him to find the money, if you will.

The original group that was told to us as being the primary investor was -- is not the current people he's talking to. He's been in what I would say is a state of trying to raise money ever since.

Q. Has that party made a binding and actionable

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proposal to Magnetation, LLC for its consideration?
A. No, sadly, not.
Q. Okay. And how long has -- have Magnetation, LLC been negotiating with this party?
A. Again, the discussion started in late August, I believe August 24th or 25th, somewhere in there. We had given him a number of timelines or deadlines, if you will, to get to a financed term sheet which have not been met at every step.
Q. And sitting here today, do you have any expectation that that Magnetation will receive a binding and actionable properly financed proposal from this entity?
A. I do not.
Q. Now, just turning back for a moment to the spring of 2016, at that point did you understand that JP Morgan had concerns about the cash position of the business?
A. Yes. JP Morgan became increasingly concerned, especially after Alvarez & Marsal got involved in regards to liquidity going forward and the cash collateral.
Q. Did you ever discuss the company's cash

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position and the use of cash collateral with JP Morgan or its advisors in spring of 2016?
A. On a number of calls they had raised that concern and Alvarez Marsal was interfacing directly with Mr. Talarico on our capital forecast.
All companies in Chapter 11 there's a 13-week capital forecast that lays out the company's cash flows for the next 13 weeks so they were actively diligently raising concerns about that.
Q. Okay. Now, did JP Morgan come forward at some point to the debtors and make a proposal in order to protect its position and its cash collateral and its-- its position as a secured lender?
A. Yes. In June we received notice that they wanted to have a call with us and on that call they informed us of a term sheet that they were sending over which was an agreement between them and AK Steel to, in effect, fund the business and wind it down, which is really the basis of the GSA that we are discussing today.
Q. Okay. And that was June of this year, June

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2016?
A. That was June, yes.
Q. Okay. Now, did PJT play any role in negotiating the Global Settlement Agreement, what is come to be known as a Global Settlement Agreement?
A. Yes. The agreement on behalf of Mag, LLC was negotiated by an independent committee which, again, is FTI, Mike Talarico, Dave Beckman and Davis Polk and PJT as well.
Q. And just to go back for a moment, when was the independent committee formed?
A. It was formed, I believe, in May of 2016.
Q. And why? Why did Magnetation form the independent committee?
A. Magnetation, LLC received a letter from the attorney's of the Ad Hoc Group expressing concern that we -- that the management team of Mag, LLC was also the management team of Mag, Inc. and they expressed a concern about independence in terms of interfacing with third parties and major decisions involving Mag, LLC and claimed that there could be a conflict there and so the independent committee was formed to address that letter,

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that concern in that letter.
Q. Did the members of the independent committee that you have identified as Mr. Talarico and Mr. Beckman have any association with Mag, Inc.?
A. No, they did not.
Q. Okay. So all of their duties went solely to Mag, LLC?
A. That's correct.
Q. Okay. Now, in connection with the negotiation of the GSA, did the Magnetation, LLC Board of Managers have any involvement?
A. No, they did not.
Q. Okay. In fact, isn't it correct that the Magnetation Board of Managers hasn't met since at least until October of 2015?
A. Yes, the last time was in 2015.
Q. Okay. Who ultimately approved the GSA on behalf of Magnetation, LLC?
A. It was the independent company and Mike Talarico, is I believe, the signatory.
Q. All right. Now, did Mag, Inc. ever participate in the negotiation of the GSA?
A. So they were brought in at the -- let's say at the very, very end when the Mag, LLC

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issues were resolved or basically resolved because there were a number of items that frankly involve Mag, Inc. that needed to be negotiated, so they were brought in at the very end.

Q. Okay. Before they were brought in, who were the parties that negotiated the GSA?

A. So it was purely the Mag, LLC professionals, so Davis Polk, PJT, the two gentleman from FTI, Mike Talarico, Dave Beckman, the independent committee.

Q. Okay. And what parties was Magnetation, LLC negotiating with? Again, this is prior to bringing in Mag, Inc. there at the end?

A. Yes. It was the professionals for AK Steel, which was primarily Ron Gotchald, as well as Lazar (Unintelligible) and for JP Morgan it was (Unintelligible) as well as Tom Hill from Alvarez and Marsal.

Q. Okay. Now focusing at this point in the GSA negotiations where Mag, Inc. was brought in to the discussions, why did Magnetation, LLC believe that Magnetation, Inc. needed to be brought in?

A. Sure. There was, as I mentioned before, the

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employees, the salaried employees as well as the technology are something that is being used by Mag, LLC through a series of inter-company agreements. We needed to properly wind down the business, both the ability to use the technology as well as to have access to those employees.

Again, they are -- the GSA itself could be, as I understand it from the attorneys, be viewed as a potential termination of those agreements and so we needed Mag, Inc.'s support in that GSA.

Q. Who negotiated on behalf of Mag, Inc. when it was brought into the negotiations?

A. Mag, Inc. has a law firm working for it. I believe it's Krieg DeVault and Mr. Lehtinen -- I'm sorry, Larry Lehtinen. Larry Lehtinen is the primary negotiator for Mag, Inc.

Q. All right. To your knowledge, did Mr. Larry Lehtinen ever negotiate any aspect of the GSA on behalf of Mag, LLC as distinct from Mag, Inc.?

A. No, he did not.

Q. What about Mr. Matthew Lehtinen?

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A. No, he did not.

Q. And, to your knowledge, did Mr. Joe Broking ever negotiate any aspect of the GSA on behalf of Mag, LLC?

A. No, he did not.

Q. Did you at some point inform the representatives of the Ad Hoc Group that you had received an approach from JP Morgan with respect to a potential deal with JP Morgan and AK Steel to wind down the business?

A. I did not speak to Mr. Vescio until the GSA in effect had been agreed upon and assigned at that point as a courtesy to let him know that it was coming.

Q. Okay. Prior to that time, did you let the Ad Hoc Committee know that there were negotiations going on with respect to a potential transaction?

A. We had asked both AK and JP Morgan to allow us to do that and they refused and so multiple times we had asked and were told not to.

Q. Did you ever have any discussions with the Ad Hoc Group letting them know that time was short and if they were going to come up with

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an alternative transaction that would permit the company's emergence that it needed to be done very soon?

A. Yes.

Q. What did you tell them?

A. Again, as -- without being exactly specific about a deal with AK, I told them, particularly with the one party we were negotiating with, was at that point promising financing, but was just not getting it to us, that time was running short and that we needed it very quickly or else other alternatives would have to be taken.

Q. So for how many months did the debtors negotiate the transaction with JP Morgan and AK Steel that ultimately became the GSA?

A. About two months, June to August, late August.

Q. And were the negotiations, from your view, between Mag, LLC and the other parties to the GSA arm's length negotiations?

A. They were at times quite contentious.

Q. Now, let's just focus for a second now on the terms of the GSA.

In your view, given the potential

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alternatives available to Magnetation, LLC at this point, how does the GSA compare?
A. It is currently our only option. We're facing a looming crisis toward November, late October, so we don't have much time.
We do not have in hand any assurance or any firm financeable term sheet.
We did negotiate in the GSA a fiduciary out with the hope that, you know, two parties that were actively doing work would come forth and actually have a global that made that be superior to the GSA.
Nothing came of that and so as we sit here today there's nothing to compare the GSA to. It is our only option and, you know, we have our issues with liquidity coming up.
Q. So from your perspective, why is the GSA -- what are the advantages of the GSA to the debtor?
A. Sure. It provides for an orderly wind down on the business. It provides the estate with the funding to allow for that.
If we were just to continue to operate until cash ran out, then it would be a scenario of a fire sale where we wouldn't

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have the ability to thoughtfully take time to have someone sell the assets.
The GSA also allows us that period of time to deal with our WARN act notices, so we're actually able to reduce some of the admin claims that are -- that would exist if we were just to stop operating because we ran out of cash.
It's a responsible way of us to wind down the business. We have the funding and, again, given the structure of it, you know, there is a possibility here of (Unintelligible) to the bond holders under the GSA.
Q. Does the GSA provide full recovery for the Magnetation, LLC senior secured lender?
A. Yes, it does.
Q. Does it provide Mag, LLC in the form of a wind down budget with funding to safely secure and close its facilities if it's unable to sell them?
A. Yes, that's the purpose.
Q. Now, how does the GSA gradually close down the debtor's operations?
A. It's over a period of time there's a

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reduction in force. Again, as I mentioned, employees are -- unfortunately, no one wanted the GSA to happen, but it is a gradual reduction of folks overtime and then a sale process of the assets would be commenced. Frankly, discussions would start as soon as the GSA is approved.
The GSA also allowed for the company to try to convert as much as its concentrate to pellets so that the actionable salable assets are in its most valuable form as opposed to concentrate found in the ground.
Q. At this point is Magnetation, LLC continuing to manufacture pellets and sell them to AK?
A. Yes, they are.
Q. At what point, assuming that the GSA is, indeed, approved, will that cease?
A. In the near term.
Q. Okay. And that will be a date after -- assuming the approval of the GSA, the approval of the GSA?
A. Yes.
Q. All right. Now, pursuant to the GSA, what assets is Magnetation, LLC transferring to other parties?

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A. Sure. The other part of the effective date transfers, if you will, AK is receiving a transfer of the receivables and then agreed upon inventory that they would have.
The remaining property and equipment, which has been referred to as the remaining assets in the GSA, that then is what would be put up for auction, so that is the physical plants, equipment that's there, and the inter-company note that we have with Mag, Inc.
Q. Okay. And just so we're clear, the plant, the property, the equipment, the note, none of that is being transferred or sold pursuant to the GSA?
A. No. It's going to be sold through an auction process.
Q. Okay. So that will be something that will happen later on pursuant to a separate process and proceeding?
A. That's correct.
Q. Now, is it your understanding that AK Steel is going to be out of pocket, to use a less colloquial term, will incur costs as a result of the GSA in favor of the debtor?

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A. Yes. It is our estimate that we are going to have -- AK will be out of money between $25 and $30 million as a matter of this GSA, which is a combination of the funding of the wind down budget as well as limitations that exist in the waterfall, but they are not getting back the full amount of the cash that they are paying through the first step which is to, in effect, step into JP Morgan's shoes.

Q. So let's just kind of sum it all up. Sitting here today, are you aware of any alternative transaction that the debtors could consummate in accordance with the Bankruptcy Code and applicable law that would provide for a higher or better return for the estate?

A. There's none.

Q. You testified, I believe, earlier that you believe that Magnetation is suffering from a liquidity short fall.

Is that correct?

A. That's correct.

Q. I would like to show you an exhibit, this is an exhibit that's been provided previously to, I think, all of the objectors. I don't

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believe there will be any objections to it, but if there's somebody in the room who does, they will let us know. Can you -- yes, just because there's not enough (Unintelligible).

THE COURT: That's fine.

BY MS. STARR:

Q. Are you ready, Mr. Buschmann?

A. Oh, yes.

Q. Do you recognize this document entitled liquidity forecast?

A. Yes, I do.

Q. Okay. And was PJT involved in preparing this?

A. It was prepared by Mr. Talarico, but we were aware of it and discussed it before.

Q. Now, I believe you testified earlier that Magnetation, LLC is running out of cash?

A. That's correct.

Q. Looking at this exhibit, which I guess we should mark as Buschmann 1 so the record is clear, if you look at the week of October 21st, do you see that?

A. I do, yes.

Q. And what does the -- what does the chart reflect with respect to the liquidity

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forecast for Magnetation, LLC?

THE COURT: Are you seeking to have this admitted into evidence?

MS. STARR: No. I think this is more or less an aide to the testimony, so we don't have to submit this into evidence. We certainly can have -- because Mr. Buschmann is more than capable of simply testifying as to his understanding of what the forecast shows.

THE COURT: It's a demonstrative aide?

MS. STARR: Yes.

THE COURT: Mr. Ratelle, you will have to step up to the microphone.

MR. RATELLE: Your Honor, I will object to this as not only hearsay. I think the witness has indicated that somebody else prepared this. I don't know what his basis for testifying on the information that's laid out in this document. So No. 1, there's lack of foundation. No. 2, it is hearsay and, No. 3, there's no foundation established for this witness to be able to identify whether and to what extent there's a liquidity crisis

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at any point in time.

I don't think he was hired for that purpose. I think he's testified as to what he was hired for.

MR. COHEN: And the Ad Hoc Committee will join in those objections.

MS. STARR: We're happy to testify, but we can remove this, but about Mr. Buschmann's knowledge.

THE COURT: The objections are overruled. It's not a -- it's not being sought to be put into evidence. Those are valid grounds, had it been sought to have been put into evidence.

To the extent it's simply demonstrative of his testimony, you can object to his testimony as he goes along, but I don't have any problem with it being on the -- up there or available to people to help follow his testimony as a demonstrative.

You can go ahead.

BY MS. STARR:

Q. All right. Mr. Buschmann, let's just back up for a moment.

Do you receive and review the liquidity

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forecasts that are prepared by Magnetation, LLC?
A. Yes, I do.
Q. Okay. And are you familiar with the liquidity forecast as of September 30th, 2016, which was last Friday that was prepared by Magnetation and what it shows?
A. Yes.
Q. Okay. What is your understanding of Magnetation's liquidity position by the week of October 21st based on your review of the liquidity forecast?
MR. RATELLE: Your Honor, I am going to --
THE COURT: You have to step up to the microphone.
MR. RATELLE: Again, we'll object. Lack of foundation. The fact that he has seen these reports doesn't establish sufficient foundation for him to testify as to what these reports show.
His testimony is clearly based on reports that have been prepared by other parties and I think we're entitled to find out who those -- what those people did to prepare

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this liquidity analysis.
THE COURT: Ms. Starr?
MS. STARR: Well, PJT has been involved in the preparation of liquidity materials for the company, not just today but throughout the period and while Mr. Buschmann was not the author of the liquidity forecast, he's refuted, he's well familiar with it. It's been discussed among the company. I think he has more than an ability of testify about what his understanding of the company's liquidity position is.
THE COURT: Well, the objection is sustained. You can ask him what his understanding is. I will give that the proper weight that it deserves. He didn't prepare it. I will -- unless you can establish he has personal knowledge about it. He can certainly testify as to what he thinks it shows, but I am not taking it into evidence until you get the person with the right foundation.
MS. STARR: The next guy is coming up. We'll talk to the author of this particular report next.

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THE COURT: Okay.
BY MS. STARR:
Q. Why don't you tell us what your understanding of Magnetation, LLC's liquidity position is in October and leading into the first week of November?
A. My understanding is that it actually goes to zero, so we are in a perfect -- run out of cash.
There is a rebound, a short rebound, to a million dollars, but then thereafter the company, in fact, is out of cash going forward.
Again, we focus on the line that's zero, but obviously given the swings that can occur in any business, (Unintelligible), we are talking about a million dollars, that's a low level of cash.
Q. In your view, is it better for Magnetation, LLC to execute the GSA and conduct the orderly wind down laid out in that agreement or to simply continue to operate until it runs out of cash in November?
A. As I mentioned before, I think the GSA is a better alternative. Again, it allows us to

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deal with administrative expenses as well as give us time to orderly sell the assets and wind down the business.
Q. If the company were to simply shutdown because it ran out of cash, what would your understanding of the consequences be?
A. Again, it would be a fire sale, so no funding to dissolve the assets. It would be a scramble to get rid of them and we would have incurred incremental admin expenses.
Q. All right. Thank you. Thank you very much. Well, let me ask you one more question. In your view, Mr. Buschmann, did you advise Magnetation, LLC that you believed that the GSA was in the company's best interest?
A. Yes, I believe it's the only alternative.
MS. STARR: All right. Thank you Mr. Buschmann. I don't have any questions.
THE COURT: Thank you, Ms. Starr. I don't know how people have decided any particular order. Okay. I apologize for that.
MS. STARR: Your Honor, actually, I have just been informed that there is a deal on the objection of the Ad Hoc Committee

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and we would ask if we could just take a short break.

THE COURT: Do you want to withdraw your evidentiary objections now?

MS. STARR: But if I may --

MR. DUNNE: We will keep them because the rulings were so wise.

MS. STARR: It might make sense, Your Honor, just to take a moment to firm that up rather than spend time on a cross examination that I think may not be necessary.

THE COURT: Others may want to cross examine.

MS. STARR: Understood.

THE COURT: This will give them a chance to prepare for that and possibly organize it as well, so that they can coordinate those efforts, so that is fine.

About how much time do you think you will need to finalize this, and we will put it on the record, assuming you do want to put something on the record?

MS. STARR: Five to ten minutes.

MR. COHEN: Why don't we take 15

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because of the number of lawyers.

THE COURT: Yes. Okay. Why don't we take a break then from -- it's 11:20 now. Why don't we reconvene at 11:35. Based on how things normally go, probably that doesn't mean 11:35. It means a little later, but that will give everybody else a chance to regroup and prepare for their cross examination of this witness.

MS. STARR: Thank you, Your Honor.

THE COURT: We will take a little break. Thank you all very much and see you in 15 minutes.

(A recess was had in the proceedings)

THE COURT: Mr. Starr, I am not rushing you, but whenever you're ready.

MS. STARR: As you can see, I am popping out of my chair.

THE COURT: All right. All right. Very good.

MS. STARR: Your Honor, we have good news. We have very good news.

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The Magnetation, LLC and the other constituents have reached a deal with respect to the objections brought by the bond holders and I will leave it to Mr. -- for counsel for the bond holders to describe the details, but we believe this is an excellent development.

Not only does this lead to the withdrawal of the objection and the streamlined hearing, but really much more important to us, we now have the support of all of the major creditor groups for Magnetation, LLC in this -- in this motion, the UCC, JP Morgan, our senior secured lender, and now the Ad Hoc Committee, with the only objections from the economic creditor left from mechanic's liens.

We are very happy to have their support and we think it's going to be critical to reaching as successful -- a successful resolution here.

I should say we think that this transaction that's been proposed by the bond holders to follow the GSA is a real benefit to the company. It will involve the purchase of all or substantially all of the company's assets and will eliminate all the risk of

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trying to sell it during the course of the wind down, that we may not be able to sell it or sell it at really terrible discounts and it will indeed allow us to find a pathway to potentially get to a purchaser who could operate this, and that's really what all of us have wanted all along.

So I think that it's better to allow the bond holders to speak to some of the details here, so perhaps we will ask Mr. Cohen to come and talk about that.

THE COURT: All right. Mr. Cohen is going to do that. Okay.

MR. COHEN: Your Honor, I would actually prefer my partner, Mr. Fleck, to do that as he was our negotiator.

THE COURT: All right. We don't you -- very good. Why don't you make -- tell me your name, Sir.

MR. FLECK: For the record, Evan Fleck of Milbank Tweed Hadley & McCloy on behalf of the Ad Hoc Group of bond holders and pre-petition secured DIP lenders.

Good morning, Your Honor.

THE COURT: Before you start, are

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people having trouble -- there are some seats around, I think. Are people having trouble findings seats? It looks like there's one up here. It looks like people moving in the back rows. There may be a couple of seats there. People are not making some themselves too uncomfortable and allow people to sit down. If they are just here just to watch this, as far as I'm concerned, someone can sit in the witness chair, if they would like. Don't worry. No one will question you, but you're welcome to sit up here.

Okay. Go ahead, Sir.

MR. FLECK: Thank you, Your Honor.

Let me just start on behalf of our client, the bond holder and the DIP lenders, to express our appreciation to the court, to Your Honor, and the court staff for your indulgence. There's been a lot of paper filed in anticipation of the hearing, a lot of preparation for what was expected to be a contested hearing, at least with our active participation, and we very much appreciate the court's indulgence, especially in

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addition -- in connection with the delay of this morning's proceedings. Thank you, Your Honor.

Moving to the substance, as Ms. Starr reported, we are very pleased to have a resolution of our objection to the GSA motion. There are some modifications that have been agreed to by the parties that are (Unintelligible) to state on the record and, of course, to invite the other parties to the GSA to make additional comments with the court's indulgence to clarify anything on the record so that we're all solely on the same page.

We're obviously operating at break neck pace here with some parties who are a bit tired, admittedly, and to try and get this deal done among the major constituencies in the case, and so I just want to make sure that everyone is clear and comfortable before we leave this phase of the proceedings.

Your Honor, these have been difficult cases. We started last year, obviously, before Judge Kishel and we would have preferred to have delivered to Your Honor a

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case that was in a different phase and had a better trajectory ahead.

Part of the deal, and I will speak to it in a moment, Ms. Starr referenced it, is that what brought us to this point and our client's willingness to move forward with support for a modified GSA is that future, that recognition and hope that we can on a fairly immediate basis move to a proceeding before Your Honor where our clients use their claim, which are secured claims that are not being satisfied, there's not money to satisfy those claims the under waterfall, certainly not in full or to make any significant dent in what are DIP claims of $156 million and approximately $360 million of secured pre-petition debt to be able to use those claims as the code provides for a credit bid of the asset, the remaining assets of the estate.

The hope there is that we can deliver a go forward business that for the -- particularly for the employees of the iron range, but also for our clients. This is some sort of recovery in the go forward transaction.

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Obviously, Your Honor, that's not before the court today. We're not seeking for it to be before the court today, but I mention it a couple of times because it is important that that transaction move forward quickly because the hope and the -- our belief that that's a realistic go forward transaction for ourselves and for the stakeholders of Magnetation, that diminishes as days go on. You may ask why.

In part, it's because of the significant burn rate of running the estate and it's also because we do have a party that we expect to be able to enter into a transaction with.

Our hope is is it's ERP. ERP is very much known in this space. Again, I am not proposing them to the court today. We don't have the stalking horse bid or a credit bid or APA to file today. We expect to have that in the very near term, but their ERPs ability to continue to use the business, to work the assets and to provide for a going concern is at its best if we're able to do that soon before the idling process is really well underway.

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And part of the deal, and the agreement that we have with the parties, including Mag, Inc. is for their support for that go forward transaction.

So let me just rewind a little bit, Your Honor, if I may, and speak specifically to the modifications to the GAS that relate to the changes to the recovery waterfall and those have been agreed by all the parties to the GSA. We're joining them in support of the GSA at this point.

A couple of principals changes, Your Honor. First, is that AK Steel has agreed to waive its recovery with respect to $6 million under the waterfall and the debtors for their part have agreed to waive $1 million of recovery under the waterfall that's currently contemplated by the GSA.

There's a new waterfall, and I will describe how, at least my understanding and I hope it's consistent with the other party's understanding, of how the waterfall works.

The first -- under the revised waterfall contemplated by the -- what will be the GSA before Your Honor, the first $6 million would

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be for the benefit of the revolving lender, JP and its agent.

The next two and a half million would be for the bond holder's interest on account of bond holder claim.

Following that would be, again, back to the revolver, JP and its agent, in the amount sufficient to repay their claim in full.

At that point the next three and a half million dollars would be for the benefit of the bond holder group and any balance would be to the estate.

Obviously, Your Honor, I just want to say for the avoidance of debt, when I say these amounts go to these parties, it's in satisfaction of claims, secured claims, that they have against the estate. The remainder going into the estate.

There also are some other -- they are ancillary, but important parts of the deal with JP Morgan. There's what I will call a clarification that the fees and expenses of the advisors who are working on behalf of JP Morgan and their revolving lender group will continue to be supported through the -- the

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close of the transactions.

Let me just be clear about that. Until there's recovery in full, to the revolving lenders, for our part they have also agreed that the fees and expenses of the advisors to the Ad Hoc Group would continue to be paid by the estate through the closing of a transaction for a credit bid, that's an agreement by all the parties to the -- to the revised GSA.

Your Honor, as I said, the next steps really are not before Your Honor today, but it is a condition for the parties to support moving forward with appropriate speed given due process considerations, obviously you give appropriate weight, but given the size of the bond holder and DIP lender's claims against the remaining assets, the marketing process that has taken place to date, the active engagement by all the parties in the courtroom and following these proceedings, we do feel it's appropriate to be able to move forward with a process, with an APA process and a sale process very quickly.

We understand it's not -- it hasn't been

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noticed for today and there need to be rights for the parties to look at an APA and understand how their contracts will be treated, but we would seek to do that on an expedited basis.

THE COURT: How expedited are you talking?

MR. FLECK: Well, we would look to have a hearing as soon as the court would permit. We understood there had been initially a hearing scheduled for next Tuesday before the court that I understood was then rescheduled given the holiday on Tuesday.

As soon as the court is available and we would -- we would make a commitment, Your Honor, that the APA would be on file X number of business days in advance of that hearing so the parties would have a right to -- obviously have an opportunity to review it and work with us to make sure they understand which -- how the contracts are being treated and so we would -- if next week was available, that's what we would look to have to secure. That's certainly our desire and

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the party's desire.
The last point, Your Honor, before I seed the podium to other parties, it goes to Mag, Inc. I referenced the fact that they -- certainly they are a supporting party. We have an agreement with them.
There are terms that as it relates to Mag, Inc.'s specific support, so there is no confusion. They are on board with a credit bid transaction. They are supportive of an orderly transition to a purchaser, a purchaser that will have the continued use of the technology, not all the technology. The business is owned by the debtors. Some of it is owned by Mag, Inc. or its affiliate. Part of our agreement, and it was a key part of our agreement with them, was for Mag, Inc. to make that technology available to a purchaser of the business, so that's a very important term and it has been agreed to by the parties.
There are some other ancillary terms as between us and Mag, Inc. to make sure that the transition from debtor estate to a purchaser that hopefully will continue the

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business as a going concern will be smooth and efficient and hopefully as little cost as possible.
I think with that, that covers the terms as I understand them and I'm happy -- first of all, to answer any questions from the court and then to seed the podium.
THE COURT: Well, I have none at this time. It sounds like substantially it's just reshuffling the deck of the secured creditors, for lack of a better way of explaining it. It's all on a lot of secured claims and how the money is paid, in other words redoing the waterfall, as you put it. That's the substance of this, it sounds like.
MR. FLECK: Yes. I think that's right and for us it's also assurances of the parties that we'll move forward expeditiously on a go forward transaction. Obviously that will be before Your Honor to approve at the appropriate time.
THE COURT: And you can -- since you're here, you can start talking to my calendar clerk. I don't know off the top of my head what my schedule is like next week,

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but you can start talking to her. Okay. Thank you.
MR. FLECK: Thank you, Your Honor.
THE COURT: Anyone else who wants to speak to this or add anything to what's been said and make sure you --
MR. QUSBA: Good afternoon, Your Honor. Sandy Qusba, Simpson Thacher & Bartlett, counsel for JP Morgan's agent for the pre-petition revolver lenders.
THE COURT: Good morning.
MR. QUSBA: Good morning.
To echo Mr. Fleck's comments, we also are very appreciative of the court's time, particularly all the time outs you have given us to allow discussions to proceed.
Mr. Fleck did, in fact --
THE COURT: I appreciate those comments but, you know, it is what I am paid to do.
MR. QUSBA: Mr. Fleck did describe the waterfall accurately. JP Morgan would be first in line at $6 million as far as first distributions are concerned and

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thereafter bonds at two and a half and then JP Morgan would be entitled to be claim down on the balance of their exposure.
Now, this arrangement, just again to echo Mr. Fleck's point, is very much subject to closing, subject to Your Honor approving the settlement agreement itself, but closing on the settlement, the Global Settlement Agreement, on Friday.
One need only look at the Buschmann demonstrative to the right to see what we're fighting against and --
THE COURT: I didn't let that into evidence.
MR. QUSBA: I understand. I'm just saying you just have to observe it. That's all you have to do. To avoid, you know, the financial catastrophe that faces us, we are agreeing to this with the understanding that this closing will take place on Friday.
JP Morgan will, in fact, on behalf of the revolving lender group be paid in full in cash and then in accordance with the settlement agreement itself, essentially

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leave behind $8 million as part of the wind down process and hopefully get to the second stage transactions that Mr. Fleck was alluding to.

With respect to that, because we will still be a creditor for $8 million, assuming the closing on Friday -- on Saturday morning, for example, we certainly would continue to retain our first priority senior secured status liens.

The other part of this is that the parties, the Ad Hoc Group, et cetera, would also be supporting a transaction that pays us out in cash in full with respect to the balance, the remaining $8 million.

Mr. Fleck alluded to a credit bid and the like but there will be some cash in there in order to get us out, including our letters of credit, either through cash collateralization or the return of those LCs when drawn and terminated.

Other than that, I think Mr. Fleck also mentioned a continued payment of professional fees and expenses for both the pre-petition senior secured lenders as well as the Ad Hoc

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Group in their capacity as DIP lenders as well as pre-petition lien holders.

I think that was -- that was what I wanted to come up here and explain and just articulate.

We also appreciate, by the way, obviously, AK's participation in this -- in this further modification of the Global Settlement Agreement.

THE COURT: All right. Thank you very much for your comments.

Anyone else want to add anything? Mr. Ryan?

MR. RYAN: Your Honor, Dennis Ryan on behalf of --

THE COURT: You can step up to the lectern. Unfortunately the system doesn't pick up anything unless you do that.

MR. RYAN: Dennis Ryan on behalf of AK Steel. I think the parties have accurately described the agreement as we understand it and we are supportive of it. Thank you.

THE COURT: All right. Thank you. Anyone else? Okay.

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MR. MOTSINGER: Good morning, Dan Motsinger, counsel for Mag, Inc.

Mr. Fleck has accurately described the agreement and Mag, Inc. is supportive of it.

THE COURT: Okay. Thank you for your those comments.

Anyone else? All right. I think it sounds like the parties are all in agreement based on what's been put on the record.

Obviously, the settlement agreement will be revised accordingly and I understand you'll be moving for -- you will be moving for expedited relief and so people can check on that during the lunch break with my calendar clerk. We will try to see what we have next week on that.

Is there anything else we need to put on the record regarding the resolution with the Ad Hoc Committee?

MR. FLECK: No, Your Honor. I believe -- I believe we're covered on that.

THE COURT: Okay. It sounds like we are done there. It is now five of noon and I guess my preference at this point would be to take a break for lunch. However,

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everybody needs to eat, but I think there's also a chance to talk to perhaps some of the other parties. I don't know. Again, I'm thinking more about the EPA. It seems like that's a solvable problem, especially in view of what we just heard and all of that, that seems like some language can be worked out there. I can't get involved, unfortunately, but it sounds like something can.

I don't want to begin to figure out what's going on with the others, but anything that can further get resolved, we can narrow this down, of course, before the afternoon.

Why don't we plan on reconvening here at 1:00 or is that enough time? People have different views on that.

Ms. Starr, is that enough time?

MS. STARR: Yes. I expect that should be just fine, Your Honor, 1:00.

THE COURT: Okay. So we will reconvene here at 1:00. I thank you all. I'm always happy to see some of these things get resolved. Have a nice lunch everyone and we will see you shortly.

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(A recess was had in the proceedings)

THE COURT: All right. Welcome back.

MS. STARR: Ms. McGreal is going to take a turn.

THE COURT: Okay. Ms. McGreal, your turn. All right.

MS. MCGREAL: I only come here with good news, Your Honor. I'm here to announce another resolution.

THE COURT: All right.

MS. MCGREAL: We have had discussions with the EPA during the breaks, Your Honor, and we, I think, have been able to resolve their objection.

We are making a representation on the record that the company will dispose of certain hazardous waste that the Indiana Department of Environmental Management has identified for us that is presently on the properties. We have agreed that we have sufficient funding to enable us to dispose of that waste properly and we will commit to doing that within 60 days.

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To the extent that a purchase -- a purchaser does not close for the properties as a going concern, at that time where we make a determination that the company will not be a going concern, we will then have another 60 days to dispose of anything else on the property that's been generated by the shut down of the facilities.

I think the EPA counsel is here, Mr. Darnell.

THE COURT: All right. Yes, Sir.

MR. DARNELL: Good afternoon, Your Honor. Debtor's counsel has accurately described --

THE COURT: Just for the record, state your name one more time. I'm sorry.

MR. DARNELL: Robert Darnell with the U.S. Department of Justice on behalf of the U.S. Environmental Protection Agency.

THE COURT: Thank you.

MR. DARNELL: Debtor's counsel has accurately described our arrangement.

THE COURT: And you're withdrawing your objection?

MR. DARNELL: Yes. We do, of course, reserve our right to object to any abandonment effort in the future.

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THE COURT: Sure, and any other future motions. I understand.

MR. DARNELL: Hopefully it won't come to that. Thank you.

THE COURT: And Mr. Cohen, I never actually got you to officially withdraw your objection. I think it was stated in Mr. Fleck's comments. Just step up to lectern and let's just make sure that's on the record here.

MR. COHEN: Certainly, Your Honor. David Cohen, Milbank Tweed Hadley & McCloy on behalf of the Ad Hoc Committee.

We withdraw our objection.

THE COURT: Okay. Thank you for that. All right. All right.

Ms. McGreal, any other good news or is that it?

MS. STARR: I can't let her have all of these. I get to share.

We had also some discussions with the lien counsel for the mechanic's liens over the lunch break and those are, I think,

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progressing and what we would like to do, if Your Honor -- I beg your indulgence again, would permit us to take a short break so that the mechanic's liens can sit down with a few people in hopes that we could reach an agreement so that they could also withdraw their objection to the GSA.

THE COURT: All right. It seems to me -- none of my business, it seems to me that in view of the developments this morning that probably has some impact on their thoughts, I would imagine. Okay. We can do that.

That would leave -- there's still two other objecting parties, Ms. Wencil on behalf of the U.S. Trustee and then there was -- was it John --

MS. STARR: John J. Morgan Company, I believe.

THE COURT: John J. Morgan Company, and that's not resolved, I take it, at this time?

MS. STARR: No, Your Honor.

THE COURT: Okay. All right. All right. How much time do you think you

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will need with the lien holders?
MS. STARR: I think 20 -- we would suggest -- let's try 20 minutes.
THE COURT: All right. I do have to warn people, again, pre-existing appointments before this was scheduled for this day, I do have a 2:00 that will be brief, but I do have to warn people that there will be a 2:00 as well probably for about 10 or 15 minutes and then after that I have nothing else the rest of the day or evening, so we will be able to continue on if necessary.
All right. Why don't I not waste anymore time and let you all talk and so we will -- it's 1:05. We will reconvene at 1:25.
MS. STARR: Thank you, Your Honor.
THE COURT: Okay. Thank you all very much.

(A recess was had in the proceedings)

THE COURT: All right. Who do I get here, Ms. McGreal or Ms. Starr?

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MS. STARR: I am not the bearer of good news. I apologize. No, we don't have a deal, so we would perhaps ask Mr. Buschmann to go -- come back to the stand so he can be ready for cross examination.
THE COURT: Okay. Yes, we will go for about a half an hour and at this point I have -- have a seat, Sir, and you remain under oath, Sir.
At this point we have three objecting parties. One is a group, of course, and that would be the U.S. Trustee, the attorney for John Morgan, and the attorneys -- attorneys for the lien holders and so I don't have any particular order in mind here.
Did anybody discuss that in any way? I suppose, Ms. Wencil, your objection is probably more limited in scope.
Do you have any cross examination for this particular witness?
MS. WENCIL: No, I don't, Your Honor.
THE COURT: All right. And then let me make that -- let me ask -- come on up here, Sir, because we can't hear you from

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back there and then state your name again for the record. I'm sorry.
MR. BOYSEN: Yes, Your Honor. Brian L. Boysen of counsel to Curt M. Anderson, attorney for John J. Morgan Company and John J. Morgan Company is a lien holder, mechanic's miner's lien and we're working with the group at this point.
THE COURT: You have coordinated with them?
MR. BOYSEN: Right.
THE COURT: Okay. So with the U.S. Trustee not having any questions, is it Mr. Ratelle or Mr. Bohl who's going to --
MR. RATELLE: Your Honor, I picked the short straw, so that would be me.
THE COURT: Okay.
MR. RATELLE: Your Honor, Paul Ratelle appearing on behalf of a number of mechanic lien claimants Hammerlund Construction, Hammerlund Champion Steel, Northern Industrial Erectors, Range Electric and (Unintelligible).

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EXAMINATION

BY MR. RATELLE:
Q. Mr. Buschmann, in your direct testimony you laid out some of your background on other deals that you have done that were of the nature of a restructuring and I presume that in the excess of the 30 you made reference to, these were all deals that involved bankruptcy restructuring?
A. The vast majority of them, some out of court as well.
Q. And of those matters that you were involved in, Mr. Buschmann, did any of them -- did any of those debtors have a single customer in which all of their production was sold?
A. Not that I can think of off the top of my head.
Q. Would you say that based on your experience that a debtor that goes into bankruptcy that has one customer where all of the debtor's production is sold is pretty unusual?
A. Again, I can't say whether according to bankruptcy it is, but having a company with one customer, I think, is something probably

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less than -- less than likely than average.
Q. During your testimony you talked a little bit about this independent committee and, again, as I understand it, it's a group of folks involving -- including Mr. Talarico and one of his partners with FTI.
Is that correct?
A. That's correct.
Q. And then you're also part of the independent committee.
Is that right?
A. No, I am not.
Q. All right. Who else then is part of the independent committee?
A. (Unintelligible) Dave Beckman, my colleague.
Q. And they are looking to Davis Polk as the attorneys for the debtor in possession to provide legal advice and direction with regard to the bankruptcy matter, true?
A. Davis Polk is the advisor to the company, yes.
Q. I think you indicated that the last meeting of the Board of Managers occurred sometime in the fall of 2015.
Is that correct?

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A. That's correct.
Q. And to your knowledge, there's been no other meetings of the Board of Managers or any written resolutions of the Board of Managers in lieu of a meeting that you are aware of?
A. That's correct.
Q. Are you familiar with the constituency of the Board of Managers, who's on that group?
A. I have had to present to them in the past, yes.
Q. And how many members are there that comprise the Board of Managers?
A. I don't know the exact number, but I would guess between six and eight.
Q. And are you aware that some of those managers that are on the Board of Managers include individuals that are associated with AK Steel?
A. Yes, I am.
Q. And how many?
A. Again, I don't know exact numbers, but I can think of at least two.
Q. Okay. Do you know who the other members of the Board of Managers are?
A. Members from Mag, Inc.

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Q. So if we assume that there are six members of the Board of Managers, two of them are AK Steel associated members and the balance or four are Magnetation, Inc. related entities or individuals?
A. Well, that would make sense just given the ownership structure, so I would imagine it would be a fairly even split given that it was a 51/49 joint venture.
Q. Okay. So your best -- your best understanding as you sit here today is that there's probably equal number of members on the board that are controlled by Magnetation, Inc. and are controlled by AK Steel?
A. That would be my assumption.
Q. And how many times have you made presentations to the Board of Managers?
A. This was in 2015, so I would imagine --
THE COURT: I have to interrupt you for a moment. You're too close to the microphone. Apparently it's messing up the recording.
THE WITNESS: I'm sorry.
THE COURT: No problem.
THE WITNESS: Probably between

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five and ten.
BY MR. RATELLE:
Q. Are you aware whether any of the members of the Board of Managers have ever tendered their resignation or declined to continue to serve on the Board of Managers?
A. I am not aware of any resignations of any of the board members.
Q. You are, I presume, sufficiently familiar with the process of filing for bankruptcy protection that in order to do so there needs to be proper corporate authorization to do that, correct?
A. That's correct.
Q. And is it your understanding that the Board of Managers approved the bankruptcy filing of Magnetation, LLC and its related entities?
A. Yes, they did.
Q. So going back to your independent committee, is it the case then, Sir, that to your knowledge there's been no action by the Board of Managers ratifying or establishing Mr. Talarico and his partner as an official independent committee of the debtors?
A. Not to my knowledge, no.

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Q. As I understand it, again, from your earlier testimony, that you were retained by Magnetation, LLC sometime in the early part of 2015.
Is that correct?
A. Yes, that's correct.
Q. Say around January or so?
A. January, yes.
Q. And you were aware that at that time Magnetation was engaged in efforts to try to complete the construction of plant four?
A. Yes, that's right.
Q. And that was a fairly feverish effort where a lot of contractors were brought on to the project to try to help finish that plant, correct?
A. I would imagine so, yes.
Q. During that time, I think, you made reference to some failed efforts to restructure the debt with Magnetation.
Can you tell us what it is that you did to try to restructure the debt before the bankruptcy filing?
A. Sure. The debt here is obviously a secured debt and so there was a large number of

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holders which -- in combination with the Ad Hoc Group that we approached to provide incremental financing to allow the company to, in effect, bridge it to a better IODEX market. That financing, which again they would have to agree to, given their documentation, was something that as they looked at the markets they did not feel comfortable doing in that form, so we were facing a liquidity issue at that point and left with no option but to file.
Q. To put it a little bit differently, what they were indicating to you is that the Ad Hoc Group, in effect, may be willing to provide some additional financing to Magnetation but would prefer to do with the protection of a debtor in possession order?
A. That's correct.
Q. Was there any other efforts that you engaged in to restructure the debt other than your conversations with the Ad Hoc Group of bond holders?
A. No. At that point -- again, this was the one party that really had to sign off on the adjustment of their debt and in this case

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once they gave us their answer it was clear what direction we had to go.
Q. And so there was -- there was -- in the face of that decision made to file for bankruptcy protection.
Is that correct?
A. I'm sorry. Repeat the question.
Q. Because of the position of the ad hoc bond holders, the decision was made by Magnetation to file for bankruptcy protection?
A. Yes, that's correct. Again, we were in extreme point -- extreme liquidity dire straights I guess you could say?
Q. We'll -- a little while back to that issue of liquidity a couple of times and the questions that I have for you, Mr. Buschmann, but let's address that issue at this juncture which is looking at the period prior to the bankruptcy filing, so what is your understanding of the liquidity problem that faced Magnetation, let's say, at the end of April of 2015?
A. Well, the liquidity had gotten so low, this is actually the first case that I have ever worked on or even have remembered my partners speaking about, where we actually had to get

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a loan from the Ad Hoc Group, a bridge loan to provide us enough liquidity to actually file for bankruptcy.
Q. And what's your understanding as to the cause of that liquidity problem?
A. Again, combination of the markets and just the operations. Again, they were -- it was a low IODEX environment and the company was still spending money on capital expenditures and the like.
Q. Well, they were certainly hiring contractors to complete some of the capital expenditures, some of which they paid and some of which they didn't, correct?
A. That's correct.
Q. Are you aware of any reach out to the mechanic lien complaints, the people that were building plant four, for example, to let them know that there was a liquidity crisis and therefore unable to pay for the work that the debtor was asking them to perform?
A. I don't remember that.
Q. There was at the outset of this case an order issued by the bankruptcy court allowing the debtors to pay the claims of pre-petition

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creditors.
Do you recall that?
A. Yes, approval vendor motion.
Q. And the -- and there was money that was advanced under the debtor in possession owned by the Ad Hoc Group.
What was your understanding as to how the contractors that helped complete the plant four by the eve of the bankruptcy filing, what was your understanding as to how that money was intended to be -- to be used to address those unpaid claims?
A. Again, not exactly addressing the plant four issue, just in general there was a list of creditors that was deemed to be critical. This was work done in consultation with Mr. Talarico as the RO, if I remember correctly, as well as Mr. Broking and his team and there was a list of vendors created and I can't tell you who was on the list and who wasn't, but they were deemed the ones that were critical for the operations and were thus paid accordingly.
Q. At the time that the bankruptcy was filed, was there anything that AK Steel was doing or

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failing to do that contributed to the liquidity crisis?
A. AK Steel was actually funding the company rather somewhat aggressively. They were helping the company throughout that time up until filing. They, in fact, were lending the company money through pre-payment of receivables, pre-payment of trains and the like. They were actually helping the company with their liquidity.
MS. STARR: Your Honor, while I thought maybe this was just some background, but this has gone on and on. I don't see how this is at all related either to the motion that's before the court on the GSA or to the issues that were raised by counsel in their papers.
THE COURT: Are you saying it's going beyond the scope of the direct?
MS. STARR: I think it's well beyond the score.
THE COURT: Mr. Ratelle.
MR. RATELLE: Thank you, Your Honor. No, it's not beyond the scope of the direct. We have indicated that the only

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parties that have been benefited by this GSA are insiders. People who have, in effect, controlled this process from the very beginning, people in the instance of AK Steel and Magnetation, Inc. as the sole members of the Board of Managers of the debtors are the only ones that are receiving any benefit through this process.
THE COURT: Let me cut you off. Where did they -- where was that addressed in the direct examination?
MR. RATELLE: The direct examination was purporting to demonstrate the -- in a number of different ways that this was a fair and reasonable proposal, solution, to address issues that have arisen during the course of this bankruptcy and we're -- from our perspective we believe that the process was -- was mishandled by these critical --
THE COURT: I am going to overrule the objection, but without prejudice because I think you are starting to go astray here, especially -- not off your objection but off what was raised in the direct

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examination.
MR. RATELLE: Okay.
BY MR. RATELLE:
Q. In your -- in your direct examination you talked about 26 entities expressing at least sufficient interest in looking at Magnetation as a -- for purposes of some kind of acquisition, either as a strategic buyer or as a financial buyer or otherwise and of that group there were only four that provided some kind of non-binding proposal.
Is that a fair summary?
A. Yes. I think I said 26 signed an NDA, a non-disclosure agreement and of those 26 four have provided a term sheet.
Q. And then if I am understanding your testimony correctly, I think you indicated that of those four only one signed a form of non-disclosure agreement with AK Steel to look at the Pellet Purchase Agreement?
A. One signed an agreement and another one was in the process of negotiating that.
Q. So of all the 26, only one signed the non-disclosure agreement asked for by AK Steel and as a consequence only one of the 26

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has ever looked at that contract, to your knowledge?
A. One of the 26 signed the AK NDA.
Q. And do you know when the discussion with that particular prospective interested -- when the discussions with that prospective interested party terminated, when that was over?
A. That party has been -- again, was -- dropped its effort on the going concern, I would say, probably around three weeks ago, give or take.
Q. Three weeks ago?
A. Yeah.
Q. Do you have any understanding as to why they wouldn't go forward?
A. Again, it was a party that dropped its views on proceeding on a going concerning. I think they have their sights set on buying the assets otherwise.
Q. Buying the Magnetation assets otherwise?
A. In the wind down.
Q. Well, of the assets that compromise Magnetation, you're aware there's a plant one and a plant two, correct?
A. Yes.

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Q. There's also what's called the Jessie Load-Out facility and what's your understanding of that facility?
A. Of the Jessie Load-Out facility?
Q. Yes. What does it do?
A. That it's basically a place to ship, if you will, the concentrate.
Q. And then -- and you're aware that plant one and plant two have been dormant for most of this bankruptcy case, correct?
A. That's true, yes.
Q. And so the only -- the only part of the facilities owned by the debtors that are currently up and operating are the pellet plant in Indiana and plant four, correct?
A. That's correct.
Q. And that the way these two plants that are still operating relate to one another is that the taconite tailings are mined at or around plant four are -- then the iron ore is then extracted from those tailings at plant 4 and that turns into iron ore concentrate.
Is that right?
MS. STARR: I am going to object. I think we're well beyond the scope of the direct. Certainly Mr. Buschmann is not here to appear as an operational expert on all the plants and how they move their materials.

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THE COURT: I don't remember anything about the plants coming up in the direct.
MR. RATELLE: Part of the issue here, Your Honor, is that there are so-called remaining assets that are intended to be sold as part --
THE COURT: I understand the issue. I'm saying where did it come up in direct.
MR. RATELLE: The -- well, as I understand most of Mr. Buschmann's testimony, Your Honor, it had to do with the fact that there's no other deal that can be done, that the GSA is all there is and that's all that can be done moving forward, that otherwise a catastrophe befalls all of constituents of this bankruptcy if the Global Settlement Agreement is not approved by the court. That's the substance of what I think they tried to establish in part through Mr. Buschmann's testimony.

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We challenge that. We don't believe that that's the case. We don't believe that this is all that can be done.
THE COURT: I will overrule it, but with the same caution. I'm not sure -- I don't really see where this came up in direct. I will let you go a little while longer. Ms. Starr can renew her objection if this continues for any length off what the direct testimony was.
BY MR. RATELLE:
Q. Let me go to this point, Mr. Buschmann, just to complete the -- your understanding of the assets of Magnetation because what I want to get to is I want to ask you a question about this interested party wanting to sit back and wait for the Global Settlement Agreement to be approved and then to have an interest in stepping in and picking up the assets in the liquidation scenario.
So there's plant four. That's where the iron ore concentrate is fabricated, let me put it that way. The iron ore is extracted from the tailings and then it's turned into the concentrate and then the concentrate is

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delivered down to the pellet plant in Indiana to turn into pellets?
A. That's my understanding as well.
Q. All right. And so of those assets, has this interested party that you spoke to indicated to you or do you have any understanding as to which of those assets this interested party would be prepared to step up and acquire through the liquidation process?
A. I am not sure of the liquidation process. I remember talking to them before that. It was obviously purchase of the entire operation.
Q. And is it the case that this -- this interested party decided not to continue on with negotiating this because of the problems associated with the litigation related to the Pellet Purchase Agreement?
A. Again, it's my understanding from speaking with Houlihan that this party did drop out and it had to do with the going concern with the contract. I did not see that there was going to be peace in the valley for the contract.
Q. So this interested party was brought to you by Houlihan?

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A. No.
Q. What was Houlihan's role in speaking to this interested party?
A. Again, they were part of the -- as I mentioned before, all these negotiations were complex and the Ad Hoc Group played a role in it. They were among the last parties to speak with them about a transaction and it was described to them that they would rather focus, they being the purchaser, would rather focus on the wind down rather than the ongoing assets.
Q. You made reference in your direct examination to input from the -- from counsel on various aspects of the Global Settlement Agreement. Let me start with sort of your first contact that a Global Settlement Agreement was in place, mainly, that as I understand your earlier testimony, you learned that JP Morgan had reached out to AK Steel to see if some kind of deal could be reached between the two of them and it was -- it was at that point in time that it was brought to your attention. Is that right?
A. (Unintelligible) reached out to whom? All I

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know is we received a phone call just telling us that there was an agreement in principle among the parties and that was my testimony.
Q. So without attributing which of the two parties reached out to you, but it was your first knowledge of the possibility of a Global Settlement Agreement was an understanding that JP Morgan and AK Steel had reached an agreement in principle?
A. Yes, that's correct.
Q. And then what was your understanding as to the next steps that the debtor was going to take in response to that?
A. Well, when we first learned of it, we basically tried to improve it and, quite frankly, informed both parties that -- at least informed JP Morgan that we had bidders that we were still working with, that we wanted to see where they, frankly, were going to end up.
We, at that point, were resisting that that was the only path because we were still talking to a buyer or two. We worked with the two parties.
Again, we did not like various aspects of

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the GSA in terms of the level of funding that was being left behind, the possibility of the recoveries for the estate, so we, I think, quite vociferously, and I forget how many drafts of this document existed, but I would say probably in excess of 20, negotiated back and forth with these parties on efforts to improve the overall recovery to the estate based upon that first document that was served upon us.
Q. It was your understanding, I take it, in your discussions with counsel that for the debtor to promote this Global Settlement Agreement that contained terms acceptable to AK Steel and JP Morgan that something had to be left for the debtors, true?
MS. STARR: I am going to object if you're asking for advice from counsel about what the debtors negotiated imperatives were.
If you're simply asking him, you know, about the negotiations and what was communicated, that's perfectly fine, but I don't think anything that Mr. Buschmann has said entitles you to inquire into discussions

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with counsel about the debtor's internal negotiating strategy.

BY MR. RATELLE:

Q. Well, you were party to agreements or rather you were party to conversations that involved individuals who are associated with AK Steel and with JP Morgan, true?

A. Yes, I was.

Q. And, I take it, that during the course of those conversations the issue came up to the effect the debtor can't promote this settlement agreement unless there's something left for the debtor, true?

A. I think I would characterize it as me trying to maximize the recovery to the estate as much as we could.

Q. If there wasn't enough left for the estate, so some of the conversations, but there would be no point in promoting or seeking court approval of the Global Settlement Agreement, true?

A. That is probably fair.

Q. And to your knowledge, was the agreement in principle, the fundamental terms that had been agreed to between JP Morgan and AK

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Steel, did those change as the -- as the Global Settlement Agreement became -- matured towards its present form?

A. Yes, they did.

Q. And what specifically changed that you recall?

A. I mean, I would say a whole lot of things, but the primary areas of focus for us were the amount of funding that would be left for the estate, the terms under which we would continue operating.

Again, we were sort of converting the concentrate to pellets in order to maximize the overall value to the estate. There were provision in there in regards to just how much we had produced, the length of time we continued to produce, so it's a whole lot of economic terms and it was all geared toward trying to make sure the estate had enough money and, frankly, was generating money in the interim so that the overall recovery is to parties in the estate would be as high as possible.

Q. Was it your understand, then, that AK Steel was agreeing, notwithstanding any set off

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claims that it had asserted against the debtors, that under this Global Settlement Agreement it would recognize its obligation to pay the -- to pay on the receivables that were generated from the sale of product to them in the period preceding the approval of the Global Settlement Agreement?

A. Again, I am not sure I would answer or phrase the question as you phrased it.

Let me answer it my way, if you don't mind?

Q. I don't mind.

A. Again, as part of the agreement, AK Steel was, in effect, making a payment to the estate which was a big part of the negotiation here to, in effect, get out of the contract and was paying for the receivables that were in existence as well as receivables that they had up until that date fully disputed.

Q. Do you have an understanding as to what the total dollars are that are associated with those receivables with regard to those receivables that are disputed as well as those receivables that arise from the

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production and delivery of product from the time that the Global Settlement Agreement was signed by the parties in late August to today?

A. I don't have the exact split, but in combination of the two it's in excess of $30 million of receivables.

Q. Would it be fair to say that the agreement or the settlement that had been -- that was presented to you by AK Steel and JP Morgan, I don't want to get into which of the two of them actually contacted you, but as you became aware that such an agreement or such an agreement in principle had been reached, when did that happen? Was that in the summer, this past June of 2016?

A. Yes, that was my testimony. June they reached out.

Q. And was there a liquidity crisis at that time?

A. Liquidity has always been, what I would say, at an uncomfortable level and it got to the point where clearly for the banks it got to a point without a clear exit strategy it was -- it was low enough where, quite frankly, they

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were concerned and we have operated the business with, what I would say, razor thin margin of error for a while and in the past we have had a number of issues where trains didn't make it out or we had a fan breaking or the like, so we were always operating at a point where we were one, I would say, breakdown of the plant away from running out of cash.

Q. And has that happened prior to today?

A. Yes, we did have a material break of a fan in December.

Unfortunately, right after our victory with the EPA motion, we had to go down for a period of time as one of the large fans had to be replaced and that immediately was a forever hit in liquidity because we were not shipping pellets at that time.

Q. But then you were able to get that fixed and begin producing and delivering pellets to AK Steel, correct?

A. It was fixed, but liquidity is lost forever.

Q. You were able to continue to -- well, you're aware that the debtor in possession arrangement matured this spring?

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A. It was extended, so it was coming up for maturity and it was extended numerous times by the DIP lenders.

Q. And through the extension of the maturity date, the DIP lenders didn't advance any more money to the operation of Magnetation, correct?

A. I think I previously testified there came a point where they were done funding -- basically sending incremental money to Magnetation because of -- they had, frankly, just lent enough at that point in their minds.

Q. Notwithstanding the decision by the Ad Hoc Committee not to lend any additional money, the company was still able to operate on a monthly basis beginning in January of 2016?

A. Yes. We operated, obviously, until today.

Q. And there are bills that came due during the month of January were paid as monies came in to pay them, correct?

A. I'm sure there were bills that were paid in January, yes.

Q. And to your knowledge, were there any bills that came in in January that weren't paid?

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A. Not to my knowledge, no.

Q. And so I want to get an understanding of what you mean by a liquidity crisis. This liquidity crisis that was caused by a breakdown of a fan, the fan was fixed and production continued for January, February, March, April, May, true?

A. Yes, it did.

Q. And product was delivered and, to your knowledge, it was paid for by AK Steel in the ordinary course?

A. Yes, it was.

Q. And sales from Magnetation to AK Steel on a monthly basis was what, between $25 million to $30 million a month?

A. I don't have the exact number.

Q. Is that in the ballpark?

MS. STARR: You know, I think we're again -- we're starting to go pretty far afield of Mr. Buschmann's testimony and certainly going through how many sales there were and how much they generated in any given month is not part of the direct.

THE COURT: Overruled. It does go to liquidity issue which was raised in

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direct, but again keep it brief and to the point.

MR. RATELLE: Yes, Your Honor. Thank you.

BY MR. RATELLE:

Q. When you became aware of the agreement in principle between AK Steel and JP Morgan, was it -- was there a liquidity crisis or was there one specific event that had occurred that indicated to you that JP Morgan and AK Steel were concerned about a liquidity crisis?

A. The -- when Alvarez Marsal came on board, JP Morgan --

Q. That was this past spring?

A. That was in the spring, yes. We spent a lot of time with them on the cash flow forecast and so it became clear to them that the liquidity that we're operating under was thin. It was certainly one that they did not feel comfortable with and so again, as I testified before, in their minds that was obviously -- there was little margin of error, again, in our minds as well because we had always operated frankly at a fairly thin

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margin of error and, again, did not have a source of funding available to us in the case of an emergency or an event which, again, would be a hit to liquidity.

Q. You're aware of the notion of current assets, correct?

A. Yes, I am.

Q. They include accounts receivable, inventory and such, true?

A. That's correct.

Q. And in part what this Global Settlement Agreement does is it monetizes those current assets for the benefit of JP Morgan, true?

A. That's correct.

Q. And to monetize those current assets for the benefit of JP Morgan, it necessarily involves the shut down or wind down of the company, correct?

A. Again, it's the GSA, an all encompassing agreement. Obviously there is, as you said, there's a monetizing of current assets. I would say -- you said to the benefit of JP Morgan and the estate as well, because there's obviously a payment coming in on the effective date from AK as well, right.

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So as part of the overall arrangement, that is in the GSA, yes, there's a monetization of current assets. There's a payment to the estate. There's an effective termination of the PPA and then there's a liquidation of all the assets thereafter.

Q. Let me go at this a little bit differently, Mr. Buschmann. If the current receivables of AK Steel, let's just say they are in the neighborhood of $30 million, if all of that money got paid to JP Morgan, there would be, in effect, no funds available for Magnetation to continue to operate, true?

A. If we had no other source of financing and our sales were, in effect, not being turned into cash, which I think is what you're implying, then yes, we would have no cash coming. Obviously the cash for debt is the receivables turning into cash.

Q. I mean, in other words, even if the receivables had been paid in full and Magnetation was sitting on $30 million in cash and the purpose of the exercise would be simply to pay down JP Morgan by the amount of $30 million, that would put Magnetation out of business, wouldn't it?

A. If we were to pay $30 million today we would be out of business, correct.

Q. Do you have a general idea of the -- well, you have been involved in overseeing and evaluating the assets of Magnetation since January of 2015, true?

A. That was my testimony, yes.

THE COURT: All right. We're going to need -- as I mentioned, I had a 2:00 that turned into a 2:15, but we're going to need to take a brief break for that. Fifteen minutes, I think, is all I will need.

Thinking what could be accomplished during this break. I keep thinking about the U.S. Trustee over here and the issues -- whether her issues are really ripe in view of what I heard this morning of what's going on with the Ad Hoc Committee and whether or not that part of the motion is absolutely necessary at this time or whether it is really an alternative thing that can be handled should the -- should the ad hoc deal, in other words, the APA that they intend -- should this be approved, which I am not saying one

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way or the other. Just a thought and I don't know enough about what's going on, but you may, if you're through with the lien holders you may be able to try to resolve something with the U.S. Trustee possibly during this break or if the lien holders are still in play, you have 15 minutes here to talk about it.

We will reconvene at about 2:30.

(A recess was had in the proceedings)

THE COURT: All right. We'll continue on.

MR. RATELLE: Thank you, Your Honor.

BY MR. RATELLE:

Q. Mr. Buschmann, one of the parties to the Global Settlement Agreement is Magnetation, Inc.

Now, as I understand it, Magnetation, Inc. provides the officers for the debtor, Magnetation, LLC, true?

A. Not entirely. It provides the salaried employees of Magnetation, LLC.

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Q. And those would be the officers?
A. As well as some of the employees, the larger group, just officers.
Q. Just to be clear, the officers of the debtor are salaried employees, true?
A. That is correct.
Q. And Magnetation, Inc. provides the salaried employees which include the officers?
A. Absolutely correct.
Q. All right. And within the Global Settlement Agreement, Larry Lehtinen, among other officers, were sued because of a wage claim, correct?
A. That is correct.
Q. Okay. And evidently there was some settlement reached with regard to that claim and Magnetation, Inc. is looking for reimbursement for the debtor to deal with the wage claim that had been asserted against Larry Lehtinen and others?
MS. STARR: I am going to object as being beyond the scope. I don't believe that Mr. Buschmann provided any testimony with respect to the wage claim that's being referenced.

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MR. RATELLE: Your Honor, from my standpoint all I want to do is simply make the point that, again, when we're talking about an independent committee that's overseeing and looking at the negotiation of this Global Settlement Agreement that the officers of the debtors that remain in place are receiving direct benefits through this Global Settlement Agreement.
Let me move on to a different topic.
THE COURT: All right.
MR. RATELLE: Yes, let me move on to a different topic.
BY MR. RATELLE:
Q. You mentioned earlier, Mr. Buschmann, that AK Steel was supporting the operation of the debtor before the bankruptcy filing?
A. That's correct.
Q. And AK Steel was making contributions to the -- to the debtors pursuant to an agreement pursuant to which capital contributions would be made, true?
A. That was not my testimony.
Q. Okay. But that's your understanding. Is that right?

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A. Again, I testified to something differently, which was I had said at the time of filing there were what I would say efforts made by AK to pay receivables ahead of time that is frankly not in the current contract.
Q. Okay. And they got the benefit of having prepaid those receivables because the product was ultimately delivered to AK Steel, true?
A. Again, I am not sure that's the right characterization. They prepaid for goods that they do not have to pay for a period of time, so they got the goods, yes, but I wouldn't call it a benefit. That's for them a working capital drag.
Q. In other words, they weren't advancing a loan. They were expecting to get something direct in return for the payments that they made in advance, true?
A. It's absolutely a loan. It's a loan. It's a pre-payment of terms until they actually receive the goods. That is when, in fact, that loan will be paid off.
Q. To your knowledge, that loan was paid in full through the delivery of goods by Magnetation after the bankruptcy filing, correct?

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A. I believe the pre-payments were all paid.
Q. Was there any other financial arrangement between AK Steel and the debtors pursuant to which AK Steel advanced money to the debtors prior to the bankruptcy filing?
A. Well, I mean, yes. AK Steel is a party to the JB, so they invested hundreds of millions of dollars of equity capital into the company.
Q. Isn't it the case that AK Steel pursuant to that joint venture arrangement was obligated to make a payment to the debtors in the weeks that preceded the bankruptcy filing?
A. Not that I can think of, no.
Q. Are you aware that AK Steel ever refused to make any payments under the joint venture agreement prior to the bankruptcy filing?
A. Not that I remember.
MR. RATELLE: Nothing further.
THE COURT: Thank you, Mr. Ratelle. Just to double check, Ms. Wencil, anything?
MS. WENCIL: No, Your Honor.
THE COURT: All right. Anyone else before we go to re-direct, if there is

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any? Anyone else? All right.

MS. STARR: And, Your Honor, I don't have any re-direct. I think we're happy with Mr. Buschmann's testimony.

THE COURT: All right. Thank you for your testimony today, Sir. You can step down.

MR. RATELLE: Do I leave that --

THE COURT: You can leave that there. It doesn't matter.

MS. STARR: Your Honor, with your permission, we would like to call our next witness. The debtors ask Mr. Michael Talarico to come to the stand please.

THE COURT: All right. Sir, if you would step up here and face the clerk to my left and your right and we'll swear you in.

MICHAEL TALARICO

A witness in the above-entitled action, after having been first duly sworn, testifies and says as follows:

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THE COURT: All right. Sir, if you would take a seat in the witness chair and once you're seated and comfortable, if you would state your name and then spell it for the record.

THE WITNESS: Michael James Talarico, T-A-L-A-R-I-C-O.

EXAMINATION

BY MS. STARR:

Q. Mr. Talarico, where do you work?
A. I work for FTI Consulting.
Q. And what's your job at FTI Consulting?
A. I'm a managing director in the corporate finance and restructuring practice.
Q. All right. And do you have any professional certification, Sir?
A. Yes, I do. I'm a certified public accountant, chartered financial analyst, and a certified insolvency and restructuring advisor.
Q. All right. Now, and what are your responsibilities generally as a managing director at FTI?

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A. Generally speaking, I am the one who would be the sort of day-to-day lead on a -- on a restructuring engagement, supervising other staff members at FTI and preparing analyses and, you know, interfacing with the appropriate management personal at the client as well as other stakeholders in the case.
Q. And in your capacity as a managing director, have you been advising companies in connection with restructuring, distress situations and bankruptcies?
A. Yes, I have.
Q. Okay. And how long have you been working in the field, Sir?
A. Over 20 years.
Q. Okay. Now, let's focus now on the work that you have done for Magnetation, LLC.
When was FTI retained in connection with this case?
A. It was late May of 2015.
Q. All right. And what was your role in the FTI engagement?
A. I was retained to be the chief restructuring officers of the -- of Magnetation, LLC.
Q. And were you appointed to be an officer of

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Magnetation, LLC?
A. Yes, I was.
Q. Was your appointment as an officer of Magnetation, LLC approved by the Board of Managers of Magnetation, LLC?
A. Yes, it was.
Q. And was your appointment as CRO of Magnetation, LLC also approved by the court, in this case it was Judge Kishel?
A. Yes, it was.
Q. And are you authorized to speak and act on behalf of Magnetation, LLC?
A. I am.
Q. All right. Now, focusing on your role as CRO of Magnetation, LLC, what are your main responsibilities?
A. The main responsibilities is to oversee the restructuring efforts at the -- at Magnetation, LLC, looking at the cash flows and liquidities, preparing analyses that relate to the cash flows and liquidities, assisting in reviewing the financial business plan for -- sort of five-year business plan models and also analyzing the various restructuring paths available to the debtors.

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Q. Now, I am going to skip forward a little bit and try not to repeat too much testimony from Mr. Buschmann so we can be efficient. Why don't we fast forward to January of 2016. Did there come a time when the Ad Hoc Group informed Magnetation, LLC that it would be terminating the RSA?
A. Yes. I think it was around January 22nd of 2016. There was a communication from the ad hoc's counsel that they were terminating the restructuring support agreement.
Q. Okay. And did the Ad Hoc Committee communicate to Magnetation, LLC with respect to their intentions to provide further funding to support Magnetation, LLC?
A. Yes. They had indicated that they were no longer going to continue funding the debtors.
Q. Okay. As a result of the termination of the RSA and the message received from the Ad Hoc Committee, what did the debtors determine to do next?
A. Well, without the -- without the path provided by the restructuring support agreements, it was determined that the best course of action was to try and find a third

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party to acquire the assets and to hopefully run them as a going concern.
Q. All right. Who represented the debtors in their negotiations with these -- with potential third-party investors?
A. It was primarily the debtor's investment banker, PJT Partners.
Q. All right. And among the debtor's management, who was primarily tasked with representing the debtors in connection with these for sale negotiations?
A. It was -- it was the senior management and myself that participated in the discussions with the -- with these potential buyers, including Mr. Larry Lehtinen, Mr. Matthew Lehtinen and Mr. Joe Broking.
Q. Did there come a point in time when that changed?
A. Yes, there did.
Q. Okay. And how did it change and when?
A. Around early May of 2016 in response to a correspondence from the ad hoc's counsel that was concerned about alleged conflicts of interest between the senior management at Mag, LLC that were also employees of

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Magnetation, Inc., the debtor's formed an independent committee consisting of myself and my partner, David Beckman, who is a senior managing director at FTI Consulting in the same practice that I am.
Q. Mr. Talarico, do you have any position or connection to Mag, Inc.?
A. No, I do not.
Q. And does Mr. Beckman have any position or connection to Mag, Inc.?
A. He does not.
Q. Do you owe all your duties in this context with Magnetation, LLC?
A. Can you repeat the question?
Q. Sure. As a member of the independent committee, do you owe all of your duties to Magnetation, LLC?
A. That's correct, yes.
Q. All right. Now, once the independent committee was formed, did the committee take over representing the debtors in connection with sale and other negotiations?
A. Yes, it did.
Q. Okay. Did the independent committee have full authority to make decisions on

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prospective transactions on behalf the Magnetation, LLC?
A. Yes, it did.
Q. And did, indeed -- did the independent committee exercise that authority to make the strategic decisions with respect to such transactions?
A. It did, yes.
Q. Now, we have talked a little bit about the fact that a sale process started in January of 2016.
What was your role in that sales process?
A. I was -- I worked with PJT Partners to stay abreast of what -- of the transactions that were going on. They kept me updated in real time.
I was signing non-disclosure agreements on behalf of the debtors. I was participating in discussions with the interested parties, assisting with due diligence requests from those interested parties and basically just assisting as -- in any way that I could.
Q. All right. Did any of the negotiations with potential bidders for the Magnetation, LLC business ultimately lead to an actionable

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proposal to purchase the debtor's business?
A. It did not.
Q. So let's focus on the Global Settlement Agreement. In the midst of the debtor's search for a third party purchaser, did there come a time when the debtors received a proposal from JP Morgan?
A. Yes. Approximately mid-June of 2016 we received correspondence from -- from counsel for the JPM revolving lender group that -- that they had reached an agreement with AK Steel and they provided us with the term sheet for that deal.
Q. Okay. And what were the key terms of that proposal that JP Morgan presented to the debtors?
A. The key terms were that AK Steel was to purchase the claim, JP Morgan's claim, and they would also -- AK Steel and JP Morgan would fund -- provide funds for the debtors to orderly wind down their businesses and monetize the assets and that the -- and that the Pellet Purchase Agreement would be terminated.
Q. All right. Now, after the debtor's received

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that proposal, what was the debtor's reaction to the proposal?
A. Well, it certainly was not the preferred path. We were hoping to have an outcome where the assets were sold to a third party as a going concern, but realizing that, you know, that those -- while those activities were ongoing, we did not yet have an actionable offer to -- to negotiate. We needed to seriously consider the offer and find ways to improve the term sheet so that it would benefit the estate.
Q. So did the debtors commence negotiations with JP Morgan and AK Steel with respect to the proposal?
A. Yes, they did.
Q. All right. At the same time that the negotiations were going forward with AK Steel and JP Morgan, did the debtors also continue to pursue alternative transactions with potential buyers of the company?
A. Yes. We also continued the going concern path as well.
Q. Now, who lead the negotiations on behalf of Mag, LLC with respect to the documents that

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eventually became the GSA?
A. The independent committee did with the consultation with its legal advisors and financial advisors.
Q. And that would be you and Mr. Beckman?
A. The independent committee, yes.
Q. All right. Did Mag, Inc., play any role in the negotiations over the GSA?
A. Not until -- not until the very end when -- when -- after sort of the economic terms of the deal had been agreed upon between the debtors, JP Morgan and AK Steel.
Q. All right. And who negotiated on behalf of Mag, Inc.?
A. Mr. Larry Lehtinen and his counsel from Krieg DeVault.
Q. Now, was Mr. Lehtinen involved in negotiating the GSA on behalf of Mag, LLC?
A. No, he was not.
Q. Was Mr. Matthew Lehtinen involved in negotiating the GSA on behalf of Mag, LLC?
A. No, he was not.
Q. And was Mr. Joe Broking involved in the negotiation of the GSA on behalf of Mag, LLC?
A. No, he was not.

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Q. How long, approximately, did the negotiations between the parties take for the GSA?
A. About two and a half months.
Q. Why did it take so long?
A. Well, we were -- again, as we mentioned, we were trying to pursue a path with third parties to purchase the assets as a going concern, so we wanted sufficient time to have those options play out as well as we -- we had economic terms under the Global Settlement Agreement that we wanted to see included in that Global Settlement Agreement and those negotiations just took time to get all the parties aligned to accept those terms.
Q. Did there come a point in time in August of 2016 when JP Morgan approached the debtors to tell them that they wanted the GSA negotiations to move along more quickly?
A. Yes. Early -- early in August of 2016 I did receive a call from the financial advisors to JP and Alvarez and Marsal indicating that they were frustrated with the pace that we were -- that the negotiations were going, that they wanted to see us because of where

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the liquidity was and the fact that we had not yet found a third-party purchaser to acquire the assets, that we needed to get on the ball and get the -- wrap up our negotiations under the Global Settlement Agreement. And they talked about the bank's frustration and their potentially looking at stopping to -- the consensual consent to use cash collateral.

Q. Were you concerned about the -- the statement that it was possible that JP Morgan would no longer permit use of the cash collateral?

A. Yes. I was very concerned about that.

Q. Why were you concerned?

A. Well, without the ability to use cash collateral the debtors would be unable to fund their operations and there would be a free fall liquidation without -- without the use of cash collateral.

Q. Would a free fall liquidation, in your words, be a value maximizing result for the debtor's estate in your view?

A. Quite the opposite. I think it would be a value destroying result.

Q. At the same time that the advisors to JP

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Morgan were communicating with you, were you also preparing and reviewing internal cash liquidity forecasts for Magnetation, LLC?

A. Yes, I was.

Q. And actually just to back up for a second, who prepares the liquidity forecasts at Mag, LLC?

A. I did.

Q. Okay. So these are your cash liquidity forecasts. You weren't just looking at them? You were creating them?

A. That's correct.

Q. And focusing now on the August of 2016 time frame, what were those cash liquidity forecasts that were internal to Magnetation showing?

A. They were showing that cash flows were -- would become -- were getting tight and that by the time we got out to early November of 2016 we would be out of liquidity.

Q. And what would be the consequence for Magnetation, LLC that ran out of liquidity?

A. If they were not able to secure additional funds, it would be a free fall liquidation.

Q. And it was your view, based on the cash

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liquidity forecast that you prepared, that that would happen, at least based on those forecasts, in November at some point?

A. That's correct.

Q. In August of 2016, did the debtors conclude that it would be in the best interest of the estate to enter into the GSA?

A. Yes. Yes, they did.

Q. And I should say GSA is Global Settlement Agreement, we all know what that is?

A. Correct.

Q. Okay. And who at the debtors made that decision to enter into the GSA?

A. The independent committee made that decision, again, in consultation with its legal and financial advisors.

Q. So why did the independent committee at Magnetation, LLC decide to enter into the GSA?

A. Well, we were obviously concerned about near term liquidity. We were concerned that the bank group was losing their patience and could cease to consent to the use of cash collateral.

We were also concerned that AK Steel may

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back out of the Global Settlement Agreement and therefore -- and without having an actionable offer from a third party to buy the assets, we concluded that -- at that point in time we needed to enter into the Global Settlement Agreement and we were also -- we'd also improved the Global Settlement Agreement from the original term sheet that we saw in June such that we felt this was the best result that -- for the estate.

Q. Just so we're clear, at the time that Magnetation, LLC determined to enter into the GSA, there was no actionable alternative transaction available.

Is that right?

A. That's correct. The parties we were still talking to, but there was no actionable offer at that point in time.

Q. And was it the view of the independent committee that the GSA provided the Magnetation estate with substantial benefits?

A. Yes, it did provide -- it did provide benefits compared to the alternative which would have been running out of -- running out

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of cash and having to liquidate in a disorderly fashion.

Q. Now, in connection with deciding to enter into the GSA, did the debtors do anything to ensure that the debtors could continue to pursue other options in case they were able to find an actionable plan that would be a higher and better offer?

A. Yes. We included a fiduciary out in the -- in the Global Settlement Agreement such that between the execution of the Global Settlement Agreement and the effective date if we were able to secure an actionable offer that was higher and better that we felt close, we were permitted to withdraw the Global Settlement Agreement and replace it with the -- with the better offer.

Q. All right. After signing the GSA, did Mag then continue to work to find an actionable offer that would be higher and better from the perspective of the estate?

A. Yes. The debtors did do that.

Q. Were the debtors able to locate and secure a higher and better offer that was actionable for the benefit of the estate?

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A. No, they were not.

Q. So let's just focus for a minute on the -- on the transaction, the GSA transaction and the terms of those just so that the terms are clear to the court.

Starting with AK Steel and assuming that the GSA is approved, what is the transaction that's contemplated with AK Steel?

A. AK Steel will purchase a significant portion -- the vast majority of the JPM revolving lender group claim through the effective date payment and they will also fund $13 million to -- to wind down the business, $13 million less whatever the operating cash is on the debtors book of the effective date.

They will release all claims against -- against the debtors.

Those are the primary terms with respect to -- with respect to AK.

Q. And do we know today exactly how much AK will pay as of the effective date?

A. We do not know to the precise dollar because it does depends on the value of the receivables and the amount of cash in the operating account on the effective date, but we have a pretty good idea where that would be.

Q. And what's your best estimate?

A. My best estimate is that the -- the effective date payment will be approximately $57 million.

Q. And just so we're all clear, this is the effective date payment from AK Steel to JP Morgan whereby AK Steel will step into the shoes largely of the senior secured creditor?

A. Yes, that's correct.

Q. Okay. What will happen -- again, we're focusing on the effective date, assuming this agreement is approved, what will happen to the PPA?

A. It will be -- it will be cancelled, terminated.

Q. All right. And what is the benefit to the estate that arises from terminating the PPA in connection with this overall GSA settlement?

A. It will be -- it will have -- there are currently two litigation matters that are outstanding between AK Steel and the debtors

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and those -- those litigation matters will be, I guess, terminated, for lack of a better word, and those litigation matters could potentially have a significant cost to the estate if they were ultimately ruled in favor of AK Steel.

Q. And just so the record is complete, what are the two litigation matters that you're referencing, Sir?

A. The first is a purchase price claim that's been asserted in roughly -- the amount of roughly $30 million.

The second is the appeal by AK Steel of the assumption order that was issued by the bankruptcy court in December of 2015 related to the -- to the PPA.

Q. Will there also be an exchange of releases between and among the parties to the GSA, including AK Steel and Mag, LLC?

A. Yes, that's contemplated in the GSA.

Q. And those releases would relate to, among other things, the two litigations you just described?

A. Yes.

Q. If the debtors instead of going the GSA

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route, were to run out of the cash and be forced into, I believe your word was a free fall liquidation, what would be the value of the PPA to the debtors in that instance?

A. I actually believe the value of the PPA would be -- would be negative. If the debtors went into a free fall liquidation they would no longer be able to perform under the contract and if the -- thereby breaching the contract and subjecting the estate to potential damage claims by AK Steel for failure to perform under the contract.

Q. Okay. Now, focusing for a moment on Mag, LLC, what are Mag, LLC's obligations on the effective date under the GSA?

A. Mag, LLC's obligations are to transfer the current assets to AK Steel, so that includes the PPA receivables as they are defined in the Global Settlement Agreement, as well as certain inventory and any miscellaneous receivables that the parties can agree as to the value of.

Additionally, Magnetation will be releasing AK Steel and the other parties to the GSA, releasing them from any claims or

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liabilities and so that's what Magnetation, LLC's obligations are on the effective date.

Q. And what is the affect of Magnetation, LLC making these transfers on the effective date with respect to the AK Steel purchased claim?

A. They reduce the purchase claim on a dollar for dollar basis, AK's purchase claim.

Q. I'm sorry. I don't mean to talk over you Mr. Talarico.

A. No.

Q. Now, on the effective date, are there any fixed assets being sold to anybody?

A. No. There's no fixed assets being transferred or sold.

Q. While I think we have a transaction, potential transaction that's come up today, in general, what is the intent with respect to the fixed assets?

A. That the fixed assets would be sold pursuant to a 363 transaction and then the value would be allocated in accordance with the remaining asset proceeds waterfall that has been changed today based on the negotiations that have taken place.

Q. All right. Now, after the effective date,

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once AK Steel has bought the JP Morgan or at least most of the JP Morgan claim and received the payment from Magnetation, LLC, will AK Steel continue to have a claim?

A. Based on the settlement today, they would not have a -- would not have a claim.

Q. Would they have received -- well, let me back up.

Will they have received from Magnetation dollars completely compensating them for the dollars that they had to pay to buy the JP Morgan security claim?

A. No, they would not.

Q. Okay. So what would be the deficiency that AK Steel will at least -- what our best estimates of that deficiency will be after the effective date?

A. It would likely be somewhere in the mid $20 million range.

Q. Okay. And after the effective date, will the pre-petition revolving lender still have an outstanding secured claim?

A. Yes, they will.

Q. Okay. For approximately how much?

A. For approximately $8 million.

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Q. Okay. Now, has AK Steel agreed to cap its recovery on its -- the outstanding claim that you just described?

A. Yes. They essentially agreed to take no further recovery.

Initially in the original GSA they were capping it at $6 million, but today's settlement they have agreed to take no further payment on account of their purchase claim.

Q. Okay. So the -- the claim that originated with the senior secured lenders will be satisfied in full, but the debtors would -- will not be required to pay the entire amount because some of it will be satisfied by AK Steel's absorption of the deficiency?

A. That is correct.

Q. Now, one -- another thing you mentioned earlier that I want to just go back to, you mentioned that AK Steel will provide a fund, a wind down fund, to pay for the wind down expenses after the effective date.

Is that right?

A. Yes, they will.

Q. Okay. And what is the wind down

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contribution?
A. It is $13 million, less the operating cash balance on the debtor's balance sheet as of the effective date.
Q. Why is it important to the debtors to have a wind down fund?
A. In order to maximize the value of the remaining assets, it's important to have the money to have the staff -- to pay the staff and the expenses of safeguarding the assets, of keeping them in a condition that they can be sold. The PP& E is really the last remaining basket of assets, significant basket of assets, that the estate has.
Q. Will the wind down fund also make it possible for the debtors to pay WARN act claims with respect to their employees?
A. Yes, it does.
Q. Now, there have been certainly statements in a number of the objections that the negotiations between Magnetation, LLC and AK Steel were not at arm's length.
Are you familiar with those?
A. I have read those, yes.
Q. What is your testimony with respect to the

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nature of the negotiations between Magnetation, LLC and AK Steel on the GSA?
A. It was -- it was completely done at arm's length. AK Steel is -- has ceased to be involved in the sort of day-to-day operations of the debtors for -- for almost a year now. As has been testified to earlier, the debtors and AK Steel are involved in litigation, significant litigation, and as such, you know, there has not been sort of cooperation between the parties and the fact that this agreement -- this Global Settlement Agreement results in them paying, not what the concessions today, probably mid $30 million to -- to get out of the contract and to terminate the PPA.
I believe this was strictly an arm's length negotiation and transaction.
Q. Did the debtor's also seek concessions from AK and, I guess, JP Morgan as well in the course of the negotiations?
A. Yes. There were several points that the debtors wanted to see incorporated into the term sheet.
Q. And what were some of the key concessions

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that the debtors obtained from AK Steel?
A. Well, they received a cap. They got an agreement that AK Steel would agree to cap its recovery from the remaining asset proceed.
They agreed to increase the purchase price for pellets between the execution date and the effective date.
We received agreement that AK Steel would purchase any claim -- any pellets that were produced prior to the effective date, but not shipped prior to the effective date.
We were able to increase the amount of the wind down funding and also have the wind down funding occur all on day one.
We were able to extend or increase the amount of pellets that we could sell to them through the effective date and we also were able to get an extension in the time -- in the time frame for the effective date. We originally had or the GSA contemplated no earlier than September 30th, which is later than what the other parties to the agreement were looking for in terms -- in terms of the effective date.

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So those were -- those were some of the key ones, but there are likely others that I am just not recalling right now, but those are the key ones.
Q. Did you get AK Steel commit to providing the debtors with liquidity support if their cash balances fell below negotiated levels?
A. That's right, yes. AK Steel agreed to, if needed, accelerate receivables if there was, say, a run on the bank by vendors or any other liquidity event between the execution of the GSA and the effective date.
We have not had to -- we have not had to have them accelerate on the receivables.
Q. Now, I believe you talked earlier about the two -- two of the ongoing disputes between Magnetation and AK that are being settled as part of the GSA.
If these disputes were not settled and there was no GSA, would these litigations continue?
A. Yes, I think they would.
Q. And if that litigation, let's start with the Pellet Purchase Agreement assumption motion, if that litigation were to continue and the

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debtors were, in fact, to lose and there was a reversal of the judgment at the District Court level or the Eighth Circuit level, what would be the consequences and costs to the debtor?
A. If that agreement -- if the assumption of that agreement were to be reserved and the debtors were forced to comply with the specs that were in the original PPA, there would likely be a significant damage claims asserted by AK Steel. As -- as we -- the production, the pellets that are being produced and shipped now, while they comply with the specs that were determined to govern in the assumption order, do not comply with the original specs that were put in what is termed Exhibit B.
Q. Would there be a risk of default altogether under the assumption agreement if the debtor were unable to comply with the prior specifications?
A. Yes, they would.
Q. Now, the second litigation you identified was the litigation with respect to purchase price adjustments in which AK Steel was making a

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demand of approximately $29 million or $30 million.
What would be the exposure to the debtors if that -- if AK was to prevail on that litigation?
A. Well, the debtors certainly do not have $30 million in liquidity right now or in cash and it's likely that AK Steel would offset the -- those damages against their -- the receivables that AK Steel owes Magnetation.
Q. And what would happen if they, indeed, offset receivables in the magnitude of $30 million?
A. It would -- it would -- it would, you know, force the company into a free fall liquidation. They would not have -- they would not have monies coming in. That -- that $30 million represents 45 days of shipments, so there would not be any cash receipts coming in for a month and a half.
Q. Now, do you -- again, assume the GSA didn't exist, do you know when these litigations will be finally resolved?
A. It's hard to say exactly when they would be resolved, but they would -- the arbitration process would take likely months to finalize

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and issue a ruling.
Q. Do the debtors have the liquidity necessary to support themselves through a lengthy series of litigations with AK Steel?
A. They currently do not have sufficient liquidity.
Q. Did you believe or do you believe, is the better question, that it is in the best interest of the estate to settle these litigations?
A. I do, yes.
Q. And why do you believe -- why do the debtors believe it's in the best interest of the estate to settle these litigations?
A. Because if they were to be successful, even partially successful, the impact to the estate would be -- would be, I think, catastrophic. It would essentially run out of money.
Q. And one of the items included in the purchase price litigation are some disputed receivables that Magnetation is actually seeking from AK.
Is that right?
A. That's correct.

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Q. What is -- how are those disputed receivables being treated in the GSA?
A. AK Steel has agreed to pay those in full. It's approximately $2.5 million.
Q. Now, we talked a bit earlier about Magnetation, Inc. and that they were also a part of the GSA negotiation towards the end.
Why did you believe it was necessary to bring Magnetation, Inc. into -- into the GSA?
A. Magnetation, Inc. provides both -- provides 100 -- approximately 100 salaried employees who work on Magnetation, LLC, who work at Magnetation, LLC, under a management services agreement as well as provides office space, provides computers and IT support and software and things like that.
They also provide the technology for the operations pursuant to a technology license agreement and --
Q. And -- I'm sorry.
A. -- without that technology the debtors would be unable it produce pellets.
Q. So without access to the employees and access to the technology, Mag, LLC could not continue operations.

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Is that right?
A. That's correct.
Q. Were -- did Mag, LLC have concern that Mag, Inc. would not support the GSA?
A. Yes. We did have concerns. Mag, Inc. had indicated that they believed that Mag, LLC was in breach of both of those agreements because of its failure to indemnify Mag, Inc. employees in the FLSA litigation.
Q. Okay. So were there outstanding claims by Mag, Inc. against Mag, LLC with respect to that -- to that item?
A. Yes. They had asserted claims against Mag, LLC. They actually had -- were at one time thinking of filing a motion to compel Mag, LLC to pay these indemnification claims.
Q. Now, in addition to the settlements and releases relating to AK, does the GSA include settlement and release with Mag, Inc.?
A. Yes, it did.
Q. Okay. What settlements -- what claims did Mag, LLC settle with Mag, Inc. in connection with the GSA?
A. It did settle the claim for the alleged breach due to the failure to indemnify.

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Q. All right. And if Mag, Inc. had pulled the employees and had refused to allow additional use of the technology because of breaches of an NSA and TLA, what would be the impact on that LLC?
A. They would not be able to operate.
Q. Now, in addition to the claim related to indemnification that we have just talked about, did Mag, Inc. have other potential claims against Mag, LLC that would arise if the terms of the GSA were adopted?
A. Yes. As I mentioned before, the management services agreement provides approximately 100 -- the services of 100 employees, basically all the salaried employees.
Obviously in a wind down the estate does not need the service of 100 employees, so we were able to negotiate that the management -- that the debtors would basically be able to dictate which employees would provide service and for how long and also agree that the debtors would -- agree with Mag, Inc. that Mag, Inc. could not assert any rejection damages claims when the debtors rejected the contracts and that the technology license

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agreement was a contract that had been assumed post petition in the early days of the bankruptcy, so those claims would likely have been administrative in nature that would have been administrative claims of the estate.
Q. Okay. So if Mag, Inc. had terminated the TLA because of breaches that would arise from the terms of the GSA, that would have given rise to administrative claims?
A. Correct.
Q. Now, in consideration for Magnetation, Inc.'s agreements and releases that you have just described, what did Mag, LLC provide to Mag, Inc.?
A. They provided indemnification of up to $1 million to Mag, Inc. to reimburse them for the settlement and defense costs of the FLSA matter.
They agreed to -- Mag, LLC agreed to pick the interest on the inter-company note for a year and -- and so those were the major concessions that Mag, LLC provided to Mag, Inc. in exchange for what Mag, Inc. offered.
Q. Just focusing for a moment on the FLSA

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indemnification claim, when did Mag, Inc. first request indemnification from Mag, LLC with respect to those claims?
A. It was sometime in the spring of 2016, perhaps around March.
Q. Did Magnetation, LLC at that point agree to indemnify?
A. Magnetation, LLC did not agree to indemnify at that point.
Q. And indeed, were there threats of litigation from Magnetation, Inc. against Magnetation, LLC with respect to that indemnification claim?
A. Yes, they threatened to file a motion to compel -- to compel payment of the indemnification.
Q. Now, focusing for a second -- I believe you mentioned or you testified earlier that another item of consideration that was provided in addition to payment of the indemnification claim was an agreement to take the interest on an inter-company note?
A. That's correct.
Q. And just so it's all clear, what's the inter-company note you're talking about?

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A. There is an inter-company note between Mag -- between Magnetation, Inc. and Magnetation, LLC, so Magnetation, Inc. owes Magnetation, LLC approximately $18 and a half million, including accrued and unpaid interest on that note.
Q. And putting aside the terms of the GSA and the alterations that it makes in the note, is Magnetation, Inc. currently obligated to make principal payments to Mag, LLC?
A. The note calls for annual -- annual amortization in the amount of $3 million, but prior to -- prior to bankruptcy and on February 2, 2015, Magnetation, Inc. made a pre-payment of $9 and a half million to -- on account of that note to Magnetation, LLC and so the -- they had effectively prepaid three plus years of amortization.
Q. Okay. So in the absence of the GSA, would there be a principal payment owing to Mag, LLC will under the note this fall?
A. Not currently, no.
Q. Okay. And why did the debtors agree to defer the principal on the note, on the inter-company note?

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A. It was really more of a memorializing the transaction that occurred back in February of 2015.
I'm sorry, did you say the principal or interest?
Q. I should have said the interest. Let me ask the question again.
A. Okay.
Q. That was not a good question?
A. Yes.
Q. Why did the debtors agree to defer the interest portion of the note and pick the interest?
A. It was -- it was a part of the concession and with -- between Magnetation, LLC and Magnetation, Inc. for all of the -- given for the back and forth with the -- to make sure that we had the rights of the technology and the rights to the people that were provided on the management services agreement and, quite frankly, there was concern that Magnetation, Inc. would not be able to pay that and make the interest payment.
Q. Will the inter-company note be part of the remaining assets after the effective date?

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A. It is -- it is in the GSA. However, I believe in the settlements that we reached today that that note will be -- will be forgiven.
Q. Okay. Now, in the negotiations between Mag, Inc. and Mag, LLC with respect to the GSA, did -- were those negotiations at arm's length?
A. Yes, they were at arm's length.
Q. And were you the lead negotiator on behalf of the debtors?
A. I was, yes.
Q. So you were in a position to know?
A. Yes.
Q. And did you negotiate hard to seek concessions on behalf of Mag, LLC with Mag, Inc.?
A. Yes. We tried to get -- the main concern was we needed -- in order to maximize the value under the Global Settlement Agreement, we needed to make sure there was not going to be a disruption to the operations, that we had access to the technology, that we could produce as much as possible during this period of time.

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We had a window between the execution date and the effective date to get as much out that we could in order to maximize the receivables and the cash such that it would provide the benefit to get JP Morgan's claim paid out in full, so it was important to make sure that we had that access to the technology and the people.
Q. And do you believe that you secured benefit and -- for the estate by entering into the settlements with Mag, Inc. that we just discussed?
A. Yes. After -- since the execution of this -- of this agreement, the estate has performed such that I expect that we will be able to achieve the maximum effective date payment on the effective date which has required the company to ship pellets at a rate that they haven't shipped at in probably a year or more.
Q. So Mr. Talarico, let's turn from the GSA now to the wind down incentive and retention plan.
You're familiar with that plan, Sir?
A. Yes, I am.

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Q. All right. Can you describe the basic terms of the wind down incentive and retention plan?
A. Yes. It provides for incentive and retention payments for approximately 30 employees that the estate will need to wind down its -- its affairs in an orderly fashion so there's -- the compensation sort of falls into three buckets.
There are three individuals whose entire compensation is based entirely on incentive. There are approximately 20 or so whose payment is based solely on retention and then there are about six people whose payment is a hybrid between retention and incentives.
Q. Okay. Let's focus first on the incentive piece of this plan, the pure incentive piece of this plan, that applies to the three insider employees.
Can you explain that, Sir?
A. Yes. There are -- there are three benchmarks that have been established for the incentive piece of the -- of the incentive plan. The first is the achieving the maximum effective date payment which, as I mentioned earlier,

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has benefits in terms of getting JP Morgan paid out in full.
The second item is tied to the amount of money obtained by the estate from the monetization of the remaining asset proceeds.
And the last item is sort of controlling the wind down budget versus the $13 million of wind down funding that has been provided.
Q. And why did you chose these metrics as ways to measure the employees's performance and incentivize them?
A. I believe each of these metric contributes to the -- directly to the value that the estate can obtain and make available for distributions to creditors.
Q. And what's the maximum amount -- I'm sorry, what's the maximum amount payable to any given employee under the incentive piece of the plan?
A. The maximum amount is about $135,000.00 -- $137,000.00, I think.
Q. And in your view, do you believe that these incentive metrics are tough metrics?
A. Yes. As I mentioned before, to achieve the maximum effective date payment the debtors

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will have to operate at a level that they have not historically operated at.
The remaining asset to maximize their payout under the remaining asset proceeds will require, you know, work on behalf of the employees to sell -- sell the assets and, you know, their contributions to APA, to the 363 sale will be required to achieve their maximum payment in that.
With respect to the performance against the $13 million of wind down funding, they will have to beat it by more than ten percent in order to get their maximum payout.
Q. What will these employees need to do between the effective date and the sale of the remaining assets?
A. You know, it's a fairly lean staff at Magnetation.
They will be required to keep the assets in a salable -- in salable condition. They will be required to control the costs of the wind down budget, to cooperate in -- if there is an APA pursuant to the transactions that's been discussed, they will have to obviously contribute to preparing schedules,

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preparing -- responding to any due diligence requests, assisting with the buyer in any way they can.
Q. Now, is Mr. Larry Lehtinen included in the wind down incentive and retention plan?
A. He is not.
Q. What, if anything, will he receive?
A. He will receive for up to six months his existing salary.
Q. Now, what's the maximum cost to Mag, LLC of the wind down incentive and retention plan?
A. The maximum cost, if all the metrics are achieved, is $1.12 million.
Q. And in your view and based on your experience, is this a reasonable sum to incur in connection with these type of wind down incentive and retention agreement?
A. I believe that it is given the amount of value that is being contemplated under the GSA and the -- and the achievement of those metrics will result in, you know, tens of millions of dollars of additional recovery available for creditors.
Q. And indeed, if we focus on the conduct of the employees to date, with respect to meeting

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the incentive goal that relates to the maximum effective date payment, has it, based on your understanding of the facts, had a positive impact?
A. I think that it has. As I mentioned, the operations have been running probably as well as they ever have at Magnetation and it looks like they will be able to achieve the maximum effective date payment.
Q. And if pursuant to this plan the employees were able to ship just one more train than they would have otherwise, what would be the financial impact on the estate?
A. The value of one train is approximately $1.3 million, so one additional train is worth more than what the maximum payment is under the -- under the effective date.
Q. Now, does the incentive, the wind down incentive and retention plan, contemplate paying any employees severance?
A. It does not.
Q. Okay. Mr. Talarico, you testified earlier about what assets were being transferred on the effective date, assuming approval of the GSA.

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Do you recall that?
A. Yes, I do.
Q. Now, are you familiar with the fact that there have been objections filed in this case by certain mechanic's liens holders which claim they have miner's liens or in some cases mechanic's liens on plant four?
A. That's correct.
Q. And that as a result they believe that they have an interest in the inventory in PPA receivables that are going to transferred to AK Steel, assuming approval of the agreement?
A. Yes, I understand that to be the assertion.
Q. What is plant four?
A. Plant four is a plant located in Grand Rapids, Minnesota. It produces concentrate which is then transported by rail down to Reynolds, Indiana and converted into pellets, flux pellets.
Q. Do you know when plant four was built?
A. It was built in 2014.
Q. Do you recall when the debtors entered into the facility with JP Morgan, the senior secured lender?
A. I believe it was 2013.

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Q. Are you familiar with when the Ad Hoc Group issued the bonds that are part of the Ad Hoc Group now?
A. Yes, I believe that was also 2013.
Q. Do the debtors own the land on which plant four is located?
A. They do not. It is leased.
Q. Okay. Who do they lease it from?
A. The lessor is Itasca County.
Q. And who's the party, the debtor party, to that lease?
A. Magnetation, LLC.
Q. Now, who is the party to the PPA which is the contract that's generating the PPA receivables at issue in this matter?
A. Mag Pellet.
Q. Okay. So it's not Magnetation, LLC?
A. That's correct. It's not Magnetation, LLC.
Q. Do you know what state Magnetation Pellet or Mag Pellet was formed?
A. Yes, Indiana.
Q. Okay. So not Minnesota?
A. That's correct.
Q. Does Mag Pellet have any interest or ownership in plant four?

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A. No, it does not.
Q. Have the debtors ever mined the property upon which plant four is located?
A. It's my understanding that they have not.
Q. Are there stock piles of material located on the parcel where plant four is located?
A. I do not believe there are any stock piles that are on plant four.
Q. And to the extent that there is -- well, let me go to the next issue.
Now, I believe you testified that there's going to be inventory transferred to AK Steel at the same time -- at the time of the effective date?
A. Yes, there will be.
Q. Okay. And in general, what is the inventory that's being transferred?
A. The inventory that's being transferred is spare parts, raw materials, concentrate to the extent there is concentrate. The debtors are -- in the course of winding down are trying to minimize the amount of concentrate inventory, but there could be some concentrate left at the -- as of the effective date.

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Q. Are those items located at plant four?
A. No, they are not. There are spare parts at plant four and there are some -- a small amount of raw materials at plant four, but the concentrate would be located either at the Jessie Load-Out or in the ore barn in Reynolds, Indiana.
Q. All right. Now, I think you testified earlier that sitting here today the debtors do not have an actual proposal for a going concern transaction that is capable of being consummated in accordance with the bankruptcy law.
Is that right?
A. That's correct.
Q. If the court were to determine to reject the GSA, what options are left to the debtor going forward?
A. I think the debtors would run out of -- would run out of cash. They would not be able to operate much longer.
Q. Now, I believe you testified earlier that you're the person at Magnetation, LLC who creates the liquidity analysis and forecast.
Is that right?

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A. Yes, it is.
Q. I am going to show you a document that has been previously provided to Mr. Buschmann as a demonstrative. It's up here on the chart.
Do you have --
A. Mr. Buschmann left me -- was kind to leave me one.
MS. STARR: Your Honor, (Unintelligible).
BY MS. STARR:
Q. Mr. Talarico, are you familiar with this document entitled liquidity forecast?
A. Yes. I created it.
Q. You created it?
A. Yes, I did.
Q. So this is your document?
A. Yes, it is.
Q. And this is based on analysis that you did?
A. Yes, it is.
Q. All right. What does this chart show?
A. It is a weekly forecast of the debtor's operating cash from now until the end of the year and it shows sort of a declining liquidity position, cash position between now and the end of the year.

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Q. Is it your view based on the liquidity forecast that you have done for Magnetation, LLC that the debtor will run out of money in November of 2016?
A. Yes, absent any additional financing, yes, they would run out of money.
Q. And is it your view that the debtor will run very short of cash even prior to November of 2016?
A. Yes, even beginning in late October the cash balance will become dangerously low.
Q. In fact, what is your forecasted cash balance for the week of October 21st?
A. I believe it's $62,000.00 at the end of the week.
Q. I'm sorry, $62,000.00?
A. $62,000.00, six two.
Q. In your view as the chief restructuring officer of Magnetation, LLC, is it better for Magnetation, LLC to enter into the GSA or to continue to operate given the current liquidity forecasts?
A. To enter the GSA.
Q. And why is it better, in your view, to enter into the GSA versus allowing the liquidity

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situation to unfold?
A. The GSA provides the highest recovery to the estate that is currently available. It provides enough value to pay off the revolving lender claim as well as providing potential other recovery -- potential recoveries to other creditors in the case.
Q. And what disadvantages or harms even would the debtor suffer if instead of entering into the GSA it were to simply wait until its cash ran out and failed?
A. Well, it would not have funds to conduct an orderly wind down. It would -- it would face a potential offset of its receivables by AK for breaches or other damages under the contract and it just would -- it would provide -- it would likely provide significantly lower recoveries for the creditors of the estate.
Q. So Mr. Talarico, in your view, is it in the best interest of Magnetation, LLC to enter into the GSA?
A. Yes, it is.
MS. STARR: Mr. Talarico, I thank you very much for your time and attention. I

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don't have any further questions for you at this point?

THE COURT: All right. It is 3:45. We will take a short break.

Let me remind everyone that this -- I decide this based on the record that I have before me.

One issue I have is that the GSA has changed here today. I don't have anything in written form on that and so I understood the terms that Mr. Fleck very well pointed out to me, but I would like to see some kind of version of that at some point in time as well as the objecting parties.

What is your thought on that? No one can see those changes.

MS. STARR: I think subject to correction from my colleagues, it would be our expectation to submit something tomorrow.

THE COURT: All right.

Mr. Ratelle, your thoughts on that issue? You have to step up to the microphone.

MR. RATELLE: This is one of the reasons that we took a brief recess at the beginning of the afternoon to try to get a

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better understanding of what the Ad Hoc Committee's plans were to notice up on an expedited basis a sale motion, et cetera, and we have had those conversations and while there was a lot of information that was shared in that regard from our perspective it was -- while I think the intent was made clear in our conversations, it occurred to me that what the plan or the -- the going forward plan as it was explained to me after the -- it was put on the record seemed to take a very different tact than what I thought this was going to be, and so from my perspective I think it is important to see in writing exactly what the plan is.

As one example, Your Honor, one of the issues is that the Ad Hoc Committee is taking a look at whether or not it wants to be the stalking horse bidder or whether or not it's another party that it can bring in play, et cetera, et cetera. There's a lot of considerations. I want to be careful how I characterize this.

My impression is that there's no certainty that there's actually going to be a sale at

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the end of the day.

THE COURT: Let me interrupt you, though. I think -- what I was more concerned about was the GSA and I think that was a motion they would make if this is approved for a later date.

The terms of the GSA I heard sort of limited changes, if I understood them correctly, a waterfall adjustment. I have to look back at my notes, but there were very limited things that could probably be addressed quickly. I understand and that might be an objection for another day. I get your point. We're bringing the debtor -- the debtor will bring a motion if that ever happens to approve any sale, if there should be one, and you will have a chance to object at that time.

I'm more concerned with just these -- just the few paragraphs or few changes that were addressed by Mr. Fleck that are presently not in the copy that we have in front of us today.

MR. RATELLE: Your Honor is exactly correct that to the extent that there

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are any issues that are raised by the manner in which any disposition of the assets occur, after this date, there's an opportunity to address those issues, I agree.

The concern I have, however, is that how that is -- how that is intended to be pursued and -- well, let me rephrase it this way: We have a wind down plan that's sitting out there that's part of the GSA.

It's unclear to me to what extent that wind down plan needs to be materially modified in light of the expectation of the Ad Hoc Committee may be proceeding with its own or putting in place a potential sale. I just don't know how all that plays out.

THE COURT: Well, I think you're saying the same thing I am saying. We need to see a written version of the GSA. My assumption from what Mr. Fleck said earlier is that a lot of that stuff you just talked about won't be in there. That's an issue for another day. Of course, you're free to object if we ever get to that point. That's my understanding.

Mr. Fleck is anxious to come up.

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Ms. McGreal is getting ready.
MS. STARR: I am going to sit down. I have been standing for a really long time.
MR. FLECK: For the record, Your Honor, Evan Fleck of Milbank Tweed on behalf of the Ad Hoc Group. Thank you for the opportunity to clarify.
Your Honor heard what we said in terms of what our intentions are.
The modifications are important, but rather limited for purposes of today and what the debtor is seeking.
THE COURT: That's what I am wondering about. I understand you may have intentions for another date, but how is the GSA being changed? I understood it was waterfall provision and what else?
MR. FLECK: It is the waterfall provision and a couple of other items that were discussed.
In terms of process, we did recognize Your Honor would obviously need to understand the changes and see them in writing and we and the debtors had contemplated submitting an

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order that reflected the revisions to the GSA and specifically identifying changes to the GSA within the proposed order for Your Honor's consideration.
THE COURT: And to be clear, those changes are the water -- you tell me, I know you went through this with me earlier, the waterfall and what else? Any other ones?
MR. FLECK: The waterfall, the agreement with respect to the professional fees of certain parties, the commitment -- there's not a change to the GSA, but it is part of the compromise that was reached by the parties is the commitment to move forward as expeditiously as possible to support the transaction that Mr. Ratelle was referring to, which is again for another day, but to move forward with respect to a credit bid transaction.
THE COURT: Okay, which is not part of this, obviously. All right.
MR. FLECK: Right. It's the only commitment, most importantly of the debtors, but the other settling parties to support the transaction.

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THE COURT: All right. I want to make sure that Mr. Ratelle and I certainly understood what those changes are going to be, because we don't have it in front of us, not that -- you did a fine job of explaining it, but it got a little confusing here for a little bit and I think Mr. Ratelle needs to know that that other stuff is for another day and I think you have just -- hopefully you have just given him that comfort. He will have to read it, of course, but I think you have given him that comfort that that is for another day.
MR. RATELLE: One other quick thing, and this was posed by Mr. Talarico's testimony, what was not presented initially and has not been presented in this present colloquy with the court is the notion that the Magnetation note is going to be --
THE COURT: And that's why I asked these questions.
MR. RATELLE: I don't know what else is out there, what other parts of this deal might be sitting out there that we don't know about right now.

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THE COURT: If that's part of the deal for another day, then we don't need to worry about it now, but that's what prompted me to ask these questions. I heard testimony to the effect that Magnetation, Inc. note would be somehow forgiven and that's not part of the deal today. I don't need to deal with it now.
MR. FLECK: It's not, Your Honor. It's not part of the deal today. It's an important part of our own consideration going forward that it's part of the cooperation plan with Mag, Inc., but it's not an issue for today for the Court's consideration.
THE COURT: And that clarifies sort of the same issue I was worried about. I think you clarified that hopefully for Mr. Ratelle's comfort and for mine. Okay.
MR. FLECK: Just for completeness in my own mind, I also wanted to mention the parties -- the settling party's agreement that the closing should take place this Friday obviously assuming it is approved by the court.
THE COURT: I did hear that.

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Thank you.
MR. FLECK: Thank you.
MS. STARR: Your Honor, there's just one cleanup item which has absolutely nothing to do with the settlement.
THE COURT: Yes.
MS. STARR: It has to do with the liquidity forecast that we discussed. I mostly forgot to move it into evidence. Based on the testimony of the foundation that Mr. Talarico laid, we would like to add it to the evidence.
THE COURT: All right. Any objections to that and if so step up to the lectern? I am not hearing any objection, so exhibit -- we will call it Exhibit 1 will be admitted into evidence. I suppose this one is (Unintelligible). We will mark it.
MS. STARR: Thank you, Your Honor.
THE COURT: Anything else before we start on cross examination, which will be after a little break here? Anything else? Okay. We will take -- it's 3:50. We'll come back at 4:05. Let everybody stretch their

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legs. We will come back at 4:05 with the cross examination.
MS. STARR: Thank you, Your Honor.

(A recess was had in the proceedings)

THE COURT: Ms. Wencil, whenever you're ready you can step up to the lectern.
MS. WENCIL: Thank you, Your Honor.

EXAMINATION

BY MS. WENCIL:
Q. Good afternoon, Mr. Talarico.
A. Thank you. Good afternoon.
Q. Mr. Talarico, just to clarify the record, when you testified that two employees were working for incentive only, they are also getting their salary.
Is that correct?
A. Yes, that's correct.
Q. And all of the employees getting either a retention or an incentive bonus are receiving

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their salary during this period?
A. Yes, that's correct.
Q. Now, the wind down agreement, does it contemplate that the employees will work between, I guess, between 90 or 180 days for the debtor?
A. Yes. I think there's some that may be 60 days post-effective date, but yes, but they are staggered durations.
Q. Okay. If an APA is approved in this case, would they work for the debtor for that period of time?
A. I am not -- we have to see what the APA calls for, but I'm not -- and how long it takes to get the APA closed, but there could potentially be fewer employees needed once -- if all the remaining assets are sold in short order.
Q. For example, a retention bonus wouldn't be necessary at that point?
A. I'm sorry. Could you repeat.
Q. Would a retention bonus be necessary at that point if the assets were sold subject to an APA?
A. It would not be.

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Q. Okay.
A. Depending on how long it took to sell the -- to sell those assets.
Q. The first tier is the maximum effect date payment.
Is that correct?
A. That's correct.
Q. And you testified earlier that you estimate that AK Steel's effective date payment is going to be about $57 million?
A. Yes, after subtracting the $8 million wind down funding.
Q. And the maximum under that tier is $65 million.
Is that correct?
A. It would be a $65 million, yes, less the 8 for $57 million, correct.
Q. And therefore in that category reaching the goal of $65 million for the maximum bonus, AK Steel is actually contributing $57 million of that, approximately?
A. Well, it's contributing -- it is contributing all of that, but it is based on the debtor's receivables as well as its cash balance at the effective date which are dependent on --

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so it's not a affixed payment. It's a payment that is based on the performance of the company in generating the shipments that are necessary to create the receivables.
Q. But in addition to the effective date payment, there's also going to be pellet inventory shipped, correct?
A. There could be. It depends what pellets are left at the effective date.
Q. Okay. Do you know -- have an estimate of what those pellets would be?
A. Our current expectation is there would be very little pellet inventory at the -- at the effective date.
Q. Okay. And by very little?
A. I think less than a thousand tons.
Q. Okay. And how much does a ton sell for?
A. $108.50.
Q. And the remaining asset proceeds, this is for sales up to $25 million?
A. Yes. The maximum metric -- the maximum payout is hit once the proceeds hit $25 million.
Q. And this will include the waterfall payments?
A. This -- yes, this includes the waterfall

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payments.
Q. And if a credit bid was made during APA, would it include the credit bid as well?
A. Yes, it would.
Q. And do you have any reason to think that the debtor won't realize at least $25 million in sales or in an offer?
A. I do not know what the -- what the ultimate credit bid will be.
Q. Okay. Do you think that the assets of the debtor will sell for more than $25 million?
A. If there's -- it's hard too say. In a -- because we haven't seen the offers for -- we haven't seen the consideration for the APA or the amount of the credit bid.
Q. If there's no APA these assets will be sold during auction, correct?
A. That's correct.
Q. And if there is an APA it would go through a 363 sale?
A. Yes, that's correct.
Q. Okay. Both of those would be fully noticed?
A. Yes, they would be.
Q. Okay. Is the debtor current on its administrative expenses?

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A. Yes, it is current.
MS. WENCIL: No further questions, thank you.
THE COURT: Thank you, Ms. Wencil.
All right. I think that brings us to Mr. Ratelle.
MR. RATELLE: Thank you, Your Honor.

EXAMINATION

BY MR. RATELLE:
Q. Good afternoon, Mr. Talarico.
A. Good afternoon.
Q. In the modified order approving the Global Settlement Agreement, there was added to the order a Paragraph 58 that reads as follows, notwithstanding the foregoing to the extent that there exists a valid, perfected, enforceable, and unavoidable statutory lien on any remaining asset, the proceeds of a sale of any such remaining asset shall be distributed in accordance with applicable law and all parties rights and defenses are

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reserved with respect thereto.
Are you generally familiar with that provision?
A. I have read it, yes.
Q. And based upon the priorities that are ultimately established with respect to the statutory lien claimants, including the clients that I represent, that could disrupt the waterfall distribution, could it not?
A. It -- you know, these are legal issues. I have not analyzed the liens and who has valid liens and who does not have valid liens.
Q. But if the assumption was that there are valid, perfected, enforceable and unavoidable statutory liens on any of the remaining assets and that the proceeds from the sale of those assets shall be distributed in accordance with applicable law, if the statutory lien claimants needs have priority over JP Morgan, over the ad hoc bond holders, that would disrupt the waterfall, correct?
A. It could change the waterfall as to who would receive what proceeds.
Q. I am asking the question to confirm that my understanding, as I read this language, is

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consistent with what you're expectation would be under this language which is that if there's that priority then the waterfall, as laid out, is impacted by the priority that's carved out, if you will, under Paragraph 58, true?

A. I would -- I would have to confer with counsel. That's a legal issue. I would need to confer with counsel. I understand what you're saying that if there is someone who -- it's legally determined to have the first priority that they would be entitled to the proceeds from the sale of that assets up to the amount of their claim or the -- or the amount of the proceeds, whichever is smaller.

Q. My question is a little simpler and maybe I wasn't being very clear in the way that I articulated it.

Paragraph 58 is intended to potentially disrupt the current waterfall as -- as its been revised. It's through the proposals and agreements that have been reached in court here today with the Ad Hoc Committee, true?

MS. STARR: I am going to object. He's testified to his best understanding, but

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asking him to speculate on a series of legal issues with respect to a transaction had hasn't even happened yet makes -- makes though no sense and he's got no basis to testify.

THE COURT: I will overrule the question and you're saying a lack of foundation, I assume. I will overrule it. If he doesn't know, he can say he doesn't know and that it's a legal issue that he can't answer. He's saying that so far anyway.

BY MR. RATELLE:

Q. You had no role in approving this language that appears in the order.

Is that correct?

A. I reviewed the order, but I did not specifically add that language in.

Q. Okay. And was it added per your agreement?

A. I approved -- yes, I approved the motions that were filed in the proposed order, yes.

Q. Okay. But as I understand your testimony, you don't really know what it means?

A. I rely on my advice of my competent counsel as to -- on legal matters.

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Q. So your agreement to add this provision was based on your counsel saying it should be added?

A. Yes.

Q. Okay. Not based on your independent review of it and knowledge of what it means, correct?

A. Correct.

Q. Mr. Talarico, you provided quite a bit of testimony this afternoon regarding the arm's length negotiation that you entered in to with JP Morgan and AK Steel regarding the Global Settlement Agreement. I would like to go back to a couple of issues.

Firstly, I think in response to some questions you indicated some concerns that were raised when you first got wind of the fact that there had been an agreement in principle reached between JP Morgan and AK Steel.

Mainly, No. 1, that JP Morgan was threatening to withdraw its consent to use of cash collateral, true?

A. I don't -- that wasn't at the time that we initially saw the term sheet, the chronology,

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correct.

The JP Morgan discussion about cash collateral happened later, early August when the term sheet was first provided in June of 2015.

Q. Do you know what happened --

A. 2016, I'm sorry.

Q. JP Morgan wasn't happy with the progress that you were making in coming to a resolution on the Global Settlement Agreement in August of 2016, true?

A. That's correct.

Q. And they said if this thing doesn't get done they are going to withdraw consent to use of cash collateral, true?

A. Correct.

Q. Did you have a lot of negotiating power in dealing with that issue when JP Morgan expressed an interest in withdrawing consent to use of cash collateral?

A. Well, we continued for another approximately three weeks trying to, again, find an alternative path to the -- to the GSA, but eventually determined that we did not have another option.

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Q. Did you feel you had a lot of leverage in response to JP Morgan's threat to withdraw consent to use of cash collateral?
A. We did not -- you know, they had a lot of leverage in the case. I don't disagree with that.
Q. Okay. Did it occur to you in -- when you first learned of this settlement agreement or this agreement in principle between JP Morgan and AK Steel to ask the question how is it that JP Morgan and AK Steel have negotiated a deal outside of the purview of the -- of the debtor and now are coming to the debtor to say you need to step on board?
A. Well, JP Morgan was structuring a deal to basically sell their claim, so that they -- they I think are free to sell their claim if they chose.
Q. But that's not what they did. What they did is they reached agreement with AK Steel that involved a full release of the debtor's claims against AK Steel, true?
A. That's correct.
Q. Okay. So in other words, AK Steel said to JP Morgan yes, we'll pay some or a portion of

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your claim provided that the debtors fully release us and terminate the Pellet Purchase Agreement, correct?
A. Yes, correct.
Q. So this just wasn't kind of a flier out there where a third party is potentially interested in taking over JP Morgan's interest? It was specific to the parties in this action, true?
A. Yes, that's correct.
Q. Now, with regard to the AK Steel contract, you're aware that that contract were to remain in place extends over a period of approximately 20 years, true?
A. There's approximately 18 and a half years remaining on the contract, yes.
Q. And again, as you understand that contract, AK Steel is obligated to purchase all of the production produced by Magnetation, true?
A. Yes, correct.
Q. So if it produces $30 million of product in a given month, AK Steel is to buy all of that? If it produces $25 million in a given month, AK Steel is to purchase all of that, true?
A. They have -- they have a nomination in the contract and they will purchase up to the

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nomination in the contract.
Q. And what's the nomination in the contract?
MR. RYAN: Objection. We're getting into some of the confidential information and I don't think that's necessary to determine who -- the question which is before the court which is whether this overall global agreement is acceptable.
I think we're starting to tread into the sensitive -- we have let some things go about price and quality, but now we're starting to tread into commercially sensitive information.
THE COURT: Okay. Go ahead.
MR. RATELLE: Your Honor, if I may, at some level the argument of confidentiality, I think, really rings pretty hollow here.
There's no doubt that there are significant benefits enuring to AK Steel under this Global Settlement Agreement.
I think a party such as the ones that I represent never had access to any of these agreements are to some extent shooting in the dark and trying to figure out what do these

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agreements really provide and what are the true benefits that are being -- that enure to AK Steel under this -- under this agreement.
There's nothing confidential, in my humble judgment, about the information that I am seeking to elicit from this witness and it has a direct varying in evaluating what the benefit is to AK Steel.
I can appreciate that they may not want the -- this to come out in open court, but let's not forget this the debtor's motion to approve a settlement that has a lot of components to it.
I, for one, have absolutely no interest in figuring out what --
THE COURT: I am going to interrupt you here. Here's how we can handle it. We can take a break and you can discuss with Mr. Ryan and Ms. Starr and try to come to some parameters so that we don't have to have these continual objections about what you can ask.
You are also free to -- it is under seal. We can't let it in under testimony when it's under seal, just another way of getting it

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in. No one has moved to unseal it at this time and the judge and my predecessor ruled that it was appropriately under seal.

You could talk. It sounds like your intentions are not to get into the confidential nature. Talk with Mr. Ryan, Ms. Starr, whoever else, and try to do that off the record so it's clear and then you can ask some questions. That's one way.

Of course, if you feel that you -- it's under seal and that the issue does not -- that affects my being able to approve this, the parties have not been able to see that, you can raise that as part of your objection.

If you would like, we can take a little break, short break. I know we have taken lots of breaks, but it will save us time, most likely, if you sat down with Mr. Ryan and Ms. Starr and kind of let them know where you're going and then they can help you set the parameters of what is confidential and what isn't.

Would that be helpful to you and save us time?

MR. RATELLE: Yes, I believe that

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would, Your Honor.

THE COURT: Okay. I hate to tell everybody to take a break again, but I think this will save time and is that acceptable to you, Ms. Starr, as well?

MS. STARR: Yes, Your Honor.

THE COURT: And Mr. Ryan, does that sound like an approach that makes sense?

MR. RYAN: Yes, that's fine. It shouldn't take very long.

THE COURT: All right. Why don't -- why don't -- how long do you think?

MR. RATELLE: Five minutes.

THE COURT: Five minutes. So why don't we take five minutes, literally at 4:30. If you need a little bit more, you can let my clerk know, but we will say five minutes and you can tell them where you are going and hopefully resolve it. Okay.

(A recess was had in the proceedings)

THE COURT: All right. Mr. Ratelle, go ahead.

MR. RATELLE: Thank you, Your

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Honor.

BY MR. RATELLE:

Q. Mr. Talarico, I think you indicated that there's about another 17 years left, 17 years and some months, left under the AK Steel contract.

If this contract were to continue in place through the entire remainder of that 17 plus years, have you determined the amount of revenue that would be paid -- that would otherwise have been paid under that contract but for the Global Settlement Agreement where the contract is terminated?

A. I have not.

Q. Okay. You're aware generally of the terms of the AK Steel Pellet Purchase Agreement, true?

A. I am.

Q. And you're aware of the provisions relating to the production and AK Steel's obligation to purchase product from Magnetation?

A. Yes, I am aware of those.

Q. Is there an average estimated monthly amount that you believe would not be paid by AK Steel upon the termination of that agreement under the Global Settlement Agreement?

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A. That number really cannot be determined because the pricing is -- is not known.

Q. Is that -- is that -- is the unknownability of the pricing, the case with regard to even the pellets that are currently being produced by Magnetation?

A. No. The pellets are currently being produced. We know what the price is for those, but not future.

Q. And you were testifying earlier that the production of pellets is at the highest level at least that you have experienced since taking over the role of chief restructuring officer, true?

A. I think I testified it's the highest level that it's been in about a year.

Q. So it's actually been higher since --

A. It's been at about the same level as where it was out -- a month -- last summer is the same as where we have produced for say September of this year.

Q. Okay. The amount of product that was produced in June of 2016 is about the same level of production currently at Magnetation?

A. June of 2015.

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Q. Okay. So when you said earlier that this is the highest production ever, was that -- was that a little hyperbole?
A. No, I don't think that was my testimony. I think my testimony was it was the highest production that it has seen since last summer, since summer of 2015.
Q. And to what do you attribute that large production?
A. The production of concentrate at plant four has -- has improved versus where it had been prior in recent history.
Q. To what do you attribute the improvement in the production?
A. You know, the operations -- again, the plant four has only been running for a little over a year and a half, so it is following sort of a start-up -- start-up curve.
Q. Is there any activity that's being done at plant four that wasn't done, say, in June of 2016 that has contributed to the increase in production from June of 2016 to September of 2016?
A. They did -- they did complete a -- what's referred to as a starch project that did

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increase production.
Q. And when was that completed?
A. That was completed in either June or July of 2016.
Q. So then the production in August of 2016 was higher than June and July of 2016, true?
A. Yes.
Q. And then the production in September was also higher than June, July or August of 2016?
A. That's correct.
Q. And that has to do with this completed starch --
A. That is -- that is -- that is one of the other -- that is one of the factors, yes.
Q. What are the other factors that you are aware of?
A. I also believe where they are mining has better iron content. Where they were mining in September had better iron content in the feed.
Q. Let me ask, you're generally aware of the layout of the -- of plant four and the mining operations at plant four?
A. I have seen maps. I am not -- I am not a mining engineer. I'm not an operations

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person, but I have seen the maps of the plant and I have been out to the plant.
Q. Okay. Let me hand you what's been -- well, it's an Itasca County map.
Have you seen a map similar to this in the past regarding the plant four operation?
A. I don't recall if I have seen this -- this map. I have seen maps. I can't tell from this whether it's the same maps that I have seen in the past.
MS. STARR: I am just -- I am going to object. I mean, this is -- I have never seen this document before. This wasn't shared with us in advance.
THE COURT: Ms. Starr, he hasn't -- wait until -- if he seeks to introduce it into evidence, we will deal with it then.
MS. STARR: All right.
THE COURT: Let's see what he does with it.
BY MR. RATELLE:
Q. If you can take a moment to look at this. This is an Itasca County -- what's called other GIS map.

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Have you seen Itasca County GIS maps of plant four before?
A. I have seen -- I have seen maps of plant four. I don't know if they are Itasca County GIS maps, but I have seen maps.
Q. And are you generally familiar with the layout of plant four as it relates to, you know, the roads and the other -- well, let me ask the question differently.
Is there any reason as you look at this map to question whether or not this reflects at least a portion of the property that includes the plant four and surrounding mining areas?
A. I really can't tell.
Q. Do you recognize this document that I have just handed you?
A. No, I have not seen this document before.
Q. Okay. This is a -- this is a map of the area near Grand Rapids and the area of the -- of plant four.
You have driven to plant four many, many times while you have been CRO, correct?
A. Yes, I have driven --
Q. Do you recognize Highway 61?

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A. No. Usually I'm a passenger in the car when we go out to plant four.
Q. So if someone is going south from Grand Rapids, you would be sitting there wondering when plant four was going to show up and have no idea that actually the driver was going the opposite direction from Grand Rapids to where plant four is?
MS. STARR: I am going to object. That's totally argumentative.
BY MR. RATELLE:
Q. I think the answer is incredibly facetious. Mr. Talarico, if you were at a meeting at the Itasca County courthouse and were asked to meet with people at plant four, you would know how to get into a car and drive yourself to plant four from that location, true?
A. I would have to put it into Google maps to get there.
Q. And you're -- you have been at plant four virtually every day since May of 2015?
A. No. No, I have not.
Q. Okay. How often are you at plant four?
A. I have been -- I have been to plant four maybe four times over the last year, over the last year and a half.
Q. How do you know that the minerals that are being mined at plant four are not being mined on the property in which plant four sits, having never been or having been to plant four on only four occasions in your life?
A. I asked the land -- the gentleman at Magnetation, Mr. Michael Twite, who's the land manager.
Q. And so your testimony that you gave earlier regarding the mining has to do with what Mr. Twite has told you?
A. That's correct.
Q. And you have no independent knowledge of any that, correct?
A. That's correct.
Q. He's not in the courtroom right now, is he, Mr. Twite?
A. I'm sorry?
Q. Mr. Twite is not in the courtroom anymore, is he?
A. He is not.
Q. He was here this morning, right?
A. No, he was not.
Q. You testified as to where stock piles of minerals are located and you indicated in your testimony that the stock piles of minerals were not located on plant four, correct?
A. That's correct.
Q. And that's not based on your personal observation, is it, Sir?
A. That's right.
Q. When did you ask Mr. Twite where the stock piles were located?
A. Sometime in the last week.
Q. Do you have any idea what the legal description of plant four is?
A. I can't recall it, no.
Q. Is it your understanding that Mr. Twite was telling you that there isn't any stockpile sitting on top of the -- on top of plant four?
A. Yes, that's my understanding.
Q. Okay. And if there are stock piles on the side of plant four you don't know, correct?
A. That's correct.
Q. Okay. In terms of mining the area -- well, let me back up. You understand, do you not, Sir, that the properties that are leased by Itasca County to Magnetation include properties that are more than where plant four sits?
A. Yes. There is more property leased than just where the plant four footprint is.
Q. And where within that other property Magnetation mines iron ore, you don't know?
A. I do not know.
Q. Now, you're aware that there are a number of claimants in this case, statutory lien claimants, who are asserting a miner's lien on minerals that are mined from plant four, true?
A. Yes.
Q. Okay.
A. I am aware of that.
Q. And to your knowledge, what other creditor of Magnetation has any interest in the mines from which Magnetation extracts minerals?
A. I believe that JP Morgan and the bond holders also allege to have interest in the -- in property that's part of plant four, not where plant four sits, but in other properties around plant four.
Q. I am just talking about -- you're aware that

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minerals that are in the ground are a part of the realty.
You understand that concept, right?
A. That's my understanding, yes.
Q. Okay. All right. And when the minerals are in the ground is it your understanding that neither JP Morgan or the ad hoc note holders have an interest in those minerals that are in the ground associated with plant four?
MS. STARR: You know, I think he's starting to ask a series of legal questions here. Mr. Talarico is certainly not here to testify about the legal status of the liens or the various creditors.
THE COURT: Are you saying he has got a lack of foundation on the legal questions, is that what your objection is?
MS. STARR: Yes, Your Honor.
MR. RATELLE: Your Honor, I think Ms. Starr opened the door on this.
THE COURT: That may be, but I think -- you have to establish that he has some legal knowledge before going down that road. That objection is sustained.
BY MR. RATELLE:

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Q. Are you aware of any documents upon which JP Morgan or the ad hoc note holders are relying to assert an interest in any of the minerals that are on the properties that are on or about plant four?
A. I'm not a lawyer.
MS. STARR: Again, he's asking a series of now legal questions what documents are they relying on and he's already testified he's not a lawyer here and not the -- doesn't have the legal foundation.
THE COURT: I can rule on it, but he already answered no. So I don't think that -- I will sustain the objection to the extent he's asking about legal things, but he really only asked if he's aware of anything and he said no, so I will overrule it.
BY MR. RATELLE:
Q. Now, when you testified earlier that the debtors don't own the land that compromises plant four, on what did you rely to make that -- to draw that conclusion and provide that testimony under oath today?
A. I have seen the leases between Itasca County and Magnetation, LLC.

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Q. Let me hand you this document which is referred to as plant four (Unintelligible).
MS. STARR: Mr. Ratelle, do you have a copy of the document?
MR. RATELLE: I believe I do.
THE COURT: If not, you should have Ms. Starr review it before the witness actually.
While we're taking a break looking at that, I should warn people, I've been handed a note, which I am aware of but most of you are not, after 5:30 you're stuck in this building. If you leave, you don't get back in. We will go until we finish tonight. No one is being held captive here. Anybody is free to leave, in fact I encourage it, at any point in time, but if you wanted while -- looking that over, if anybody wanted to leave and come back with any food or anything like that, otherwise you're stuck with the vending machines on the fourth floor. Okay. Vending machines on the fourth floor, so just a warning to people who are observing here today or actually participating.
Sorry for that commercial break. You can

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go ahead.
MS. STARR: I have looked at the document.
BY MR. RATELLE:
Q. Mr. Talarico, you have seen this document before today?
A. Yes, I have.
Q. Okay. And you're aware that this is one of four lease agreements between Itasca County and Magnetation pursuant to which Magnetation was leasing property relating to plant four, correct?
A. Yes, my understanding is there are four leases.
Q. And this is one of them?
A. Yes, this is one of them.
Q. All right. And you look at the -- let's see. If you look at Page 11 of 12 you see Mr. Matthew Lehtinen's signature on that page?
A. Yes. Matthew Lehtinen, yes.
Q. And it's a notarized signature.
Do you see that?
A. Yes, I do.
Q. And you also see that Jeffrey T. Walker is

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the county auditor on the very next page and counter signs this lease on behalf of Itasca County, correct?
A. I'm sorry. Was there a question?
Q. Yes. On the very next page after Mr. Lehtinen's signature, Itasca County through Mr. Jeffrey T. Walker as Itasca County auditor has signed on behalf of Itasca County, correct?
A. Yes, that's correct.
Q. Now, under this lease agreement it states that its purpose in Paragraph 3 is to provide tenant of auxiliary lands with conjunction with tenants recovery iron bearing oxides from tailings, basins or stock piles. Tenants shall be entitled to utilize the surface rights leased here under solely in conjunction with the mining, removal, mineral processing, stock piling and transferring materials, including but not limited to or materials on and beneath the premises and in such manner as usual and customary and skillful and proper mining and mineral processing operations of similar character when conducted by the proprietors on their

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own land and in such a manner as not to cause any unnecessary or unusual permanent injury to such mine or mines or inconveniences or hindrance in the subsequent operation of the same or in the development mining or disposal of any iron ore or other valuable mineral left on or in said land.
Do you see that?
A. Yes.
Q. And is it your understanding that some or a portion of these properties that have been leased to Magnetation by Itasca County have been used for that specific purpose, correct?
A. I don't know. I'm assuming that they have, but I don't -- I have not verified that statement.
Q. Well, that's what Mr. Twite has told you, correct?
A. Yes, correct.
Q. And you have no reason to disagree with Mr. Twite on that score, correct?
A. That's correct.
Q. And it also your understanding, is it not, Sir, that the minerals that are extracted from the properties leased by Itasca County

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to Magnetation related to plant four are the materials that are brought to the plant for purposes of extracting the iron ore concentrate, correct?
MS. STARR: I am going to object to form as well as there's no foundation laid for this question.
THE COURT: Yes, you will need to lay some foundation for that. That's sustained.
BY MR. RATELLE:
Q. You testified previously that the -- that the iron ore is converted or the materials that are mined at plant four are converted into in your words flux.
Do you recall that testimony?
A. Converted into flux pellets.
Q. Right. And you understood when you provided that testimony that the -- that the iron ore is the iron ore that arises or comes from the properties that have been leased by Itasca County to Magnetation, correct?
A. I believe some of the material comes, not all of it.
Q. Do you know where all of it comes from?

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A. There are other basins that are mined at plant four.
Q. Now, when you testified that the debtors do not own the land, that Itasca County owns the land, is there any other land that you had in mind in giving that testimony by suggesting that there's other property -- your testimony just now that there are other lands or other areas beyond those that you testified to in which Magnetation mines property or mines iron ore?
A. I think when I testified about not only the land it was specific to the Itasca County land, not all of the land surrounding plant four.
Q. Now, actually the question was more specific than that, Mr. Talarico.
The question that was asked of you is whether or not the land in which Magnetation mines iron ore is owned by the debtors and you said no, it's owned by Itasca County. Now your answer suggests that there may be property beyond that which is leased by Itasca County in which Magnetation mines iron ore.

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Where does that come from?
A. I don't recall my testimony the way you have read it back, but the debtors mine iron ore around plant four in the various basins and some of it is owned land. Some of it is leased from Minnesota DNR. There's -- it's a hodge podge of lease and owned lands.
Q. And how do you know that, Sir? Are you giving a legal conclusion now because you have looked at documents?
A. I know --
MS. STARR: I object.
THE COURT: On what grounds?
MS. STARR: I think the question is argumentative and unfair.
THE COURT: It's overruled. You can answer the question, if you can.
THE WITNESS: Yes, I know that we make royalty payments to parties for the minerals that we mine and we make royalty payments to parties like Minnesota DNR. We make royalties payments to parties Great Northern Iron Ore Properties. We make royalty payment to RGGS. We make royalty payments to Glacier Park and Conoco Phillips,

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so I am assuming that those royalty payments are for something and it's for the mining of the material.
BY MR. RATELLE:
Q. I am talking about plant four. Have you sat down with each of those lease agreements and confirmed that those royalties are paid for mining materials on or around plant four?
A. Plant four is the only plant that is operating.
Q. You have royalty payments that are due under these agreements whether you mine materials or not, correct?
A. There are -- there are lease payments that are paid, some monthly, some quarterly that are fixed amounts, but then there are others -- those are credited against the mining -- the minerals that are actually consumed at the -- at plant four.
Q. And when was the last time that Magnetation made a payment, a royalty payment, to a party to a lease agreement that was not land relating to plant four?
A. I don't know the answer to that question.
Q. Are you paying royalty payments presently to

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any party to a lease agreement involving Magnetation that it does not involve the extraction of minerals from property around plant four?
A. I don't know.
Q. As you sit here today, Mr. Talarico, do you know whether or not the iron ore concentrate that was shipped to the pellet plant in Indiana to be converted into the flux pellets, come from any other -- from any mining operation other than land on or around plant four?
A. You know, plant two was idle back in February of 2016.
Q. Mr. Talarico, can you answer my question yes or no?
A. Can you repeat the question?
Q. Yes. The pellets that have been delivered to Indiana pursuant to the Global Settlement Agreement that is for the period from the effective date of the agreement to the effective -- when it was signed in August of 2016 to today, has the iron ore that compromises those pellets come from the mining of any other property than property

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surrounding plant four?
A. No.
Q. And, in fact, I think as you testified previously, you thought that one of the reasons is the improved production at plant four is that the materials being mined around plant four are of a higher grade of iron ore.
Is that still your testimony?
A. Yes.
Q. And where in relation to plant four those minerals are being mined, you have no idea as you sit here today, correct?
A. Yes. They are around plant four, but I don't know specifically how close to plant four.
Q. Just to be clear, there isn't any document that you're aware of or that you could point anyone to that you understood to be the basis upon which JP Morgan or the ad hoc bond holders assert an interest in the minerals on or about plant four.
Is that correct?
A. I am not aware of what document there would be.
Q. You are aware of the mechanic and miner lien statements that have been filed against the

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properties on or around plant four, correct?
A. Yes, I have seen the copies of the statements.
Q. So as chief restructuring officer, and you began that activity in May of 2015, as I understand it, correct?
A. Yes, that's correct.
Q. There's been a lot of testimony regarding liquidity events and you have testified to some of that as well. You heard Mr. Buschmann's testimony earlier today where he indicated that because of a malfunction of a piece of equipment at plant four that that created a liquidity crisis with the company. Is that what you recall?
A. Well, it was a malfunction at the pellet plant, but it did create a liquidity crisis, yes.
Q. In other words, it wasn't a problem with extracting the iron ore concentrate and sending it down to Indiana. It was once that material was in Indiana there was a malfunction of some kind that interfered with the production of the flux pellets?
A. Yes. There was a mechanical breakdown and a

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fire.
Q. There was a fire?
A. There was a fire, yes.
Q. Did you make an insurance claim?
A. Yes, we did.
Q. Were you paid fairly for that insurance claim?
A. We were paid -- yes, we were paid for the property -- for the property, I guess, to fix the property and we have filed a business interruption claim that we have been paid on partially. We are -- we are still working with the insurance company on that claim.
Q. When you had this breakdown at the pellet plant in December of 2015, did you explain to JP Morgan and the bond holders what had occurred?
A. Yes.
Q. And did you explain that you had made insurance claims for those -- for the losses associated with that event?
A. Yes.
Q. Did they say this is -- this is a liquidity crisis and we're not interested in supporting Magnetation as a result of the interruption

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in production that occurred by virtue of that event?
A. They didn't necessarily specifically say because of the failure at the pellet plant that they were not interested. They just were not interested because of the liquidity was -- was dangerously low.
Q. It was low, but it wasn't at a crisis stage, true?
A. Well, let's -- we needed -- after the -- after the fan drive failure occurred, our liquidity got dangerously low and we in February borrowed the last amount of money under the -- that the DIP lenders would permit us to borrow, about $7 million.
Q. And when did that occur?
A. When did the borrowing occur?
Q. Yes.
A. February of 2016.
Q. And that ameliorated the liquidity crisis when you're able to access that money, true?
A. Yes, it did, for a period of time.
Q. And just to be clear, the liquidity crisis I think you're talking about, and correct me if I'm wrong, is that the difference between the

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revenues from sales over expenses?
A. In the simplest form, yes, it's receipts minus disbursements.
Q. Of course, coming out of the receipts among the disbursements are millions of dollars in legal fees and consulting fees, true?
A. That's correct.
Q. Is there a point in time between December of 2015 to today where you have concluded, Mr. Talarico, that the debtor is administratively insolvent?
A. The debtor -- you know, if you count the DIP claim, the administrative portion of the DIP claim, the debtors are administratively -- I believe administratively insolvent.
Q. Because they have an administrative super priority claim for the entirety of their DIP loan, correct?
A. That's correct.
Q. If you wipe that aside, is it still administratively insolvent?
A. It's getting -- it's getting close to being administratively insolvent. I haven't specifically done the analysis stripping out

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the DIP claim.
Q. In your liquidity analysis, is the administrative DIP claim in that?
A. No, that's a cash balance, so it would not be in there.
Q. Okay. Does your liquidity forecast take into account that approximately $30 million of product that's been sold to AK Steel will be paid to JP Morgan as opposed to Magnetation?
A. No, because that forecast is prepared assuming that the settlement agreement does not occur.
Q. Okay. So if all the receivables that have been generated at the highest level that they have been generated since June of 2015, is it your position that notwithstanding the sale of that increased production that that will create a liquidity crisis that hadn't been created when production was much lower because -- is that your opinion?
A. It is, because that chart shows actually the collection of the higher receivables.
Q. So how do you end up in a liquidity crisis in October when production is higher, revenues are higher, but that didn't create a

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liquidity crisis of this magnitude in June of 2016 when production was much lower?
A. There are significant capital expenditures between now and the end of the year that are needed to keep the plant running in to -- in to 2017 and beyond.
Q. And who has reviewed those capital expenditures that are anticipated to be spent during the month of October and going forward?
A. I reviewed and other members of the management team have reviewed it.
Q. Okay. So just -- how much of this short fall is spent for capital expenditures?
A. The total -- I don't know the specifically as of November 4th, but the total capital expenditures in the -- in this period of time that's presented is $7 million.
Q. So what you're telling me is that if you take that $7 million and push it down the road, you don't have this liquidity crisis in October, do you, Sir?
A. Yes. You do not. If you were -- if you were to not pay those -- pay those capital expenditures, but they are necessary for the

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business.
Q. If you don't make those expenditures (Unintelligible)?
THE COURT: You are going to have to actually talk from the lectern. You can refer to the exhibit if you don't have one in front of you.
MR. RATELLE: I do, Your Honor. That's fine.
BY MR. RATELLE:
Q. If you look at the DIP down to zero that's indicated in your liquidity forecast of October 21st, if you don't make the capital expenditures that are assumed under that DIP but rather push those expenditures out by a month, you are not going to have a DIP down to zero, are you, Sir?
A. Not on October 21st you would not.
Q. Your preference as a -- based on your experience as a chief restructuring officer would be to have a lender come in and lend you the money to make the capital expenditures, true?
A. I don't know if that's my preference. There are times if you could fund it out of the

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your own profit -- out of your own cash flows that may be more advantageous than seeking a lender to provide you the money.
Q. But your liquidity analysis doesn't provide for that, true?
A. No. There's no source of third party financing for the capital expenditures.
Q. How long have you deferred making these capital expenditures that create this liquidity crisis?
A. Since around -- one of the projects we have deferred since around August. The other since September.
Q. And just to close the loop on this area of inquiry, Mr. Talarico, even though the August capital expenditure has been pushed off and the September capital expenditure has been pushed off from the period of August through today the company is producing product at the highest that its produced in over a year, true?
A. Yes, that is true.
Q. You testified earlier that there are raw materials that are present at the Jessie Load-Out facility.

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Do you recall that testimony?
A. I think I testified that they were at plant four, not Jessie Load-Out.
Q. As I recall, and I may not have my notes -- my notes might be incorrect, but I thought you said that there was concentrate at the Jessie Load-Out facility?
A. There is concentrate. That's not a raw material. That's a work in progress.
Q. Okay. And the concentrate that's at the Jessie Load-Out facility came from plant four, didn't it?
A. Yes, it did.
Q. When Magnetation, LLC extracts the iron ore concentrate from the raw materials that are brought in to its facility, it transfers that or arranges to deliver that concentrate to the Indiana plant, correct?
A. Yes, that's correct.
Q. And that plant is owned by Mag Pellet, correct?
A. Yes, that's correct.
Q. What's the internal transaction that occurs between Mag Pellet and Magnetation, LLC that accounts for that transfer of assets?

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A. The -- on the books in the accounting records the cost of that material is -- it is transferred from Mag, LLC -- I'm sorry, actually from Mag Mining, which is the legal entity that's plant four, to Mag Pellet.
Q. And does Mag Pellet pay for that -- for that iron ore concentrate? Is there actually funds that exchange hands?
A. No. The transfers are not settled in cash.
Q. It's just an inter-company transfer?
A. It's an inter-company transfer.
Q. Okay. Let me talk or ask you some questions about the Magnetation, Inc. settlement.
You talked a little bit about the indemnity claim arising from the -- what you referred to as the FSLA litigation?
A. FLSA, (Unintelligible).
Q. Correct. And as you recall, this had to do with payment or failure to pay overtime?
A. The failure to properly calculate overtime for LLC employees, correct.
Q. So they had a claiming arguing that they were entitled to money because they didn't receive the proper amount for overtime, correct?
A. That's correct.

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Q. And Mr. Lehtinen, as an officer of Magnetation, was named as a party because of the way that the law lays out is your understanding, correct?
A. That's my understanding, yes.
Q. And he had the opportunity to oversee and confirm and assure that the overtime amounts were correctly calculated and paid to the employees as an officer of Magnetation, correct?
A. That's correct.
Q. And for some reason that wasn't done or at least there was an allegation that that wasn't done properly and as a result a lawsuit was commenced against him, true?
A. That's true.
Q. And he reached some settlement with the employees in the range of about $700,000.00 and incurred somewhere in the neighborhood of $200,000.00 of legal costs in defending that claim.
Is that right?
A. The settlement was $750,000.00, $500,000.00 to the employees themselves, $250,000.00 to plaintiff's counsel and then, yes, about

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$200,000.00 or so in defense costs.
Q. Now, Magnetation, Inc. provides Mr. Lehtinen as a salaried employee to Magnetation, LLC, true?
A. That's correct.
Q. In other words, Mr. Lehtinen is an employee for Magnetation, Inc., but is -- he provides the services of the president of Magnetation, LLC through this -- I think you referred to it as the -- the management services agreement, correct?
A. Yes, that's correct.
Q. Now, the management services agreement hasn't been shared with parties like my clients in this litigation under the contention that it is confidential, correct?
A. I am not -- I am not sure of that.
Q. Well, I'll represent to you that those were the pleadings that were filed by the debtors in this matter. I can refer the court to the actual docket number where that appears, but regardless -- well, do you consider the management services agreement confidential in any respect?
A. I do think it's confidential.

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Q. Now, we haven't been shown either a copy of the management services agreement or terms other than those that are identified by Magnetation, Inc. in support of the motion and by the debtor in support of the motion, mainly these indemnity provisions.
Have you had an opportunity to review the entire management services agreement to reach the legal conclusion that there's no defense that Magnetation, LLC has to this assertion of indemnity claim for a million dollars?
A. I have reviewed the management services agreement and I have discussed -- discussed with counsel -- with my counsel the potential defenses.
Q. And you have potential defenses, correct?
A. Yes, we have potential defenses.
Q. And the technology license agreement, that also is a confidential agreement, true?
A. Yes, that's my understanding.
Q. And evidently there's a provision, and it's cited in the responses to our objections and other objections that we're going to pose to the motion to approve GSA, referring to portions of the technology license agreement

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and in particular indemnity provisions in that agreement.
Do you recall that?
A. Yes, I do.
Q. And again, is this an agreement that you have reviewed with your counsel?
A. Yes, it is.
Q. And do you believe that you have defenses to the indemnity claim asserted by Magnetation, Inc. on behalf of Mr. Lehtinen related to the FLSA litigation?
A. This one I am not -- I am not sure we do have defenses against the assertions.
Q. And when you say you're not certain, are you telling me that counsel has not identified that you have defenses?
MS. STARR: This is getting really close to trying to seek communications between Mr. Talarico and debtor's counsel, which are privileged, so I think if you could really avoid seeking the communications between counsel and Mr. Talarico I think that would make this go much further.
MR. RATELLE: Let me ask the question this way, Your Honor, if I may.

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BY MR. RATELLE:
Q. Mr. Talarico, you haven't made an independent determination as to whether there are defenses to the indemnity claim under the technical license agreement, correct?
A. That's correct.
Q. Anything that you know about it involves communications with your counsel?
A. Yes, that's correct.
Q. And as a result, you're not here independently assessing whether or not this million dollar settlement on this indemnity claim is fair or unfair, true?
A. No.
MS. STARR: He just testified he relied his counsel.
THE COURT: Hold on. Actually all of your objections need to be addressed to me. Conversations between counsel -- if you have an objection, you need to state the objection, the grounds for the objection as opposed to speaking objections. If you have them, go ahead and tell me what the grounds are.
MS. STARR: I think that there's

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no foundation. The question being that he's already testified previously that he's relied on counsel.
THE COURT: Now, I have already forgotten the question. Tell me what the question is.
MR. RATELLE: Sure. Whether or not he's made an independent determination that the settlement on the indemnity claim was fair and reasonable.
THE COURT: Maybe it was answered. I will overrule it and let him answer this again. If he's already answered, he can answer it a second time.
THE WITNESS: My --
BY MR. RATELLE:
Q. Mr. Talarico, real simple, yes or no.
A. Can you repeat the question?
Q. Have you made an independent determination, independent of your counsel, as to whether or not the indemnity settlement that arises in your view through the technical license agreement is fair and reasonable?
A. Yes, I do believe it is fair and reasonable because --

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Q. Have you made an independent determination?
A. Yes.
Q. So I am going to ask you some questions as to your basis and you made it very clear you're not relying on counsel at all for this purpose, correct?
A. Correct.
Q. Okay. Now, the technical license agreement has a provision that relates to -- Your Honor, if I may?
As I understand it, the technical license agreement has the language in it to the effect that the indemnity obligation arises from the manufacture of the -- of the product that uses the license, true?
A. Yes, that's my understanding.
Q. All right. And this is a -- this is a failure to make overtime payments, as you understand it, correct?
A. Correct.
Q. Now, you were in the courtroom when Mr. Buschmann testified about the entity that expressed at least some interest in purchasing Magnetation assets and that was the entity that signed the non-disclosure

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agreement required by AK Steel and evidently at some point after that was done that particular party expressed the -- no longer expressed an interest in purchasing the -- Magnetation as a going concern, but rather preferred to wait until the Global Settlement Agreement was approved by the court and then would come in and may participate in some transactions of the remaining assets.
Do you remember that?
A. Yes, I was here in the courtroom.
Q. And did you ever have any conversations with that interested party?
A. Yes, I did.
Q. And did you have conversations with that interested party at the time that you -- Magnetation learned that they were not interested in proceeding with a going concern purchase?
A. I think -- I don't recall being on that conversation. I learned about that from PJT.
Q. And have you had any conversations with that entity since you learned about it from PJT?
A. Yes, I have.
Q. And when was the also time you spoke to that

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person?
A. I believe it was this prior Friday, the 30th of September, I guess.
Q. Just a few days ago?
A. Yes.
Q. And what did -- what did he tell you and what did you tell him?
A. He mentioned that he was interested in potentially acquiring the assets and asked for some -- asked for some diligence information and we told him that we would -- we would work on it.
Q. That conversation suggested to you at least, Mr. Talarico, that this entity, this interested party is still waiting to see what is available through the disposition of the remaining assets after the -- after the hearing of the Global Settlement Agreement, correct?
A. Yes, that's correct.
Q. Do you know if that is an entity that has had any -- well, is this one of the entities that the Ad Hoc Committee was referring to earlier today when it discussed the terms of settlement?

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A. Yes.
Q. On average on a monthly basis how much money has Magnetation, LLC paid to Magnetation, Inc. under the various agreements that are in place? Is it in excess of a million dollars a month?
A. It's a little less than a million dollars.
Q. But it's in that neighborhood?
A. Yes, it's close to that number.
Q. And throughout your negotiations with Magnetation on its role in the agreements and accommodations in the Global Settlement Agreement, all of the officers at Magnetation had arranged to provide for Magnetation, LLC remained as those officers, true?
A. That's correct.
Q. And when you as the independent committee reached a point at which you were prepared to support a motion filed with the court seeking court approval of the GSA, did you run that agreement by anyone else within Magnetation?
A. Yes. We did share the agreement with others -- with the other officers of Magnetation.
Q. And they were in agreement?

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A. Magnetation, Inc. did sign -- was a party to the Global Settlement Agreement, did sign.
Q. You're making the assumption, and probably a fair one, that if Magnetation, Inc. is in favor of it so would the officers that are provided by Magnetation, Inc. to Mag, LLC, true?
A. Yes, that's true.
Q. In other words, they have -- at least from your perspective a strong identity of interest, correct?
A. Yes, correct.
Q. Now, in this Global Settlement Agreement not only is AK Steel relieved of any further obligations under the Pellet Purchase Agreement but there's a release of all claims, including those claims that the -- that AK Steel has raised to offset receivables that it would otherwise be obligated to pay, true?
A. Yes, it was a full release between the parties.
Q. And your understanding is that the set off amount that AK Steel has raised is in the neighborhood of $2.3 million? Did I

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understand that correctly or is it more than that?
A. No. It's -- it's approximately $30 million.
Q. Okay. And under the current order of the court with respect to the assumption of the AK Steel contract is AK Steel permitted to offset its obligations to pay for product?
A. It has not offset its obligation to pay for product.
Q. Is it even permitted to do so under current orders of the court?
A. I do not know.
Q. You know, the issue about the amount, if any -- well, let me back up.
You're aware that the assumption of the contract by Magnetation did not require Magnetation to pay any amounts to AK Steel, correct?
A. Yes, that's correct.
Q. I'm asking you these questions because I'm trying to understand your testimony regarding the fear that at any point in time AK Steel could just set off against amounts owed for product delivered?
A. I actually think that mischaracterizes my

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testimony. My testimony was that if the debtors breached the contract because they could not continue to operate under the contract, that AK Steel could offset -- offset it's damages against the receivables that currently existed.
Q. That would be an argument for them, whether or not they could actually do it is another story, true?
A. It was a fear that we -- it was a fear that we had.
Q. And the concern about continuing to provide product had to do with the timing of the payment of capital expenditure, true?
MS. STARR: Objection. Form, as well as foundation. Your Honor, I don't think he's laid any foundation for that question.
MR. RATELLE: I think the foundation has been established previously, but I can -- I can do it again.
THE COURT: All right.
BY MR. RATELLE:
Q. Mr. Talarico, the ability of Magnetation to continue to produce product pursuant to the

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contract is dependent upon having the cash necessary to pay the expenses associated with producing it, true?
A. Yes, that's correct.
Q. And in your liquidity analysis you're contemplating making capital expenditures that you have so far chosen not to spend in order for there to be sufficient funds on a current basis to produce the product that's subject to the acquisition of receivables, et cetera, by AK Steel, true?
A. Yes. Those capital expenditures are necessary to continue to be able to produce product at the rates that we have been producing them.
Q. But you haven't expended that money?
A. We have not.
Q. And you have produced at the rates that you're currently producing, true?
A. True, but going into the future --
Q. You have answered my question?
The next question is if you continue to push those capital expenditures off by a month, you would avoid the liquidity crisis that you're -- liquidity forecast indicates

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for next week or the week after or through October, correct?
A. That's correct, yes.
MR. RATELLE: Your Honor, just one moment.
I have nothing further. Thank you.
THE COURT: Thank you, Mr. Ratelle.
MS. STARR: Your Honor, we have been going a long time. We'd ask just a short, short break to let me Talarico get up and get a little water and then I would have a short re-direct.
THE COURT: All right. How much time are you asking?
MS. STARR: Ten minutes maybe.
THE COURT: Okay. At ten of -- at ten of we will take -- we will be back and we will do the re-direct then.
MS. STARR: Thank you, Your Honor.
THE COURT: Thank you.

(A recess was had in the proceedings)

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THE COURT: All right. We are ready for re-direct.
MS. STARR: Thank you, Your Honor.

EXAMINATION

BY MS. STARR:
Q. You recall being asked some questions by Mr. Ratelle about the liquidity forecast chart that we have been looking at all day?
A. Correct.
Q. Now, if the debtors don't make the capital expenditures that you identified that are forecast to be made in the coming weeks, will Mag, LLC be at risk of being able to continue to operate?
A. Yes, there could be production issues. There are two capital projects that are -- that makeup six of the $7 million of cap X that's being forecasted.
The first is the construction of a haul road to get to another basin of minerals that they need to feed the plant and to keep up production.

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The second is a more long -- longer lead time item that's referred to as the high pressure grinding roll project and that project is necessary in order to feed larger course feed material into the plant and that is a project that, while we're spending the money now, is not scheduled to come online until March, but we have continued to push the timing of that project out given the uncertainties of the case, but eventually in order -- if they were to continue as a going concern and -- they would need to make these capital projects to produce enough -- to produce enough tons for it to be economically viable.
Q. And if Magnetation does not make these capital improvements in a timely fashion, are they at risk of an operational failure?
A. They're really more at risk of just lower production, not necessarily an operational failure, just lower production.
Q. If Magnetation is unable to produce at the same rates we're talking about now and is capable of only a much lower production, does that create really all the same liquidity

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issues that we have been talking about today?
A. Yes. It would create lower shipments and therefore lower -- lower receipts and liquidity issues.
Q. And in your view would it be prudent to push out these capital expenses any further than in to the latter parts of 2017?
A. No, it's not. I don't think they can do that and still produce -- produce in 2017 at an economically viable rate.
Q. Now, you got some questions, I believe, from Mr. Ratelle about the FLSA claim.
Do you recall those?
A. Yes.
Q. Okay. Do you understand whether Mr. Larry Lehtinen had made efforts during the period when he was -- well, as Mag, LLC executive to ensure during the relevant periods that overtime was being paid properly in terms of consulting with counsel as well as communicating with the unions?
A. Yes, that is my understanding that he did -- he did believe that they were complying with the FLSA until this lawsuit was brought.
Q. Okay. Now, Mr. Ratelle asked you various

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questions about payments that are made to Mag, Inc. in connection with services provided to Mag, LLC for employees, et cetera.
Do you recall those questions?
A. Yes, I do.
Q. Now, are the payments that are made to Mag, Inc. on a monthly basis for services provided by Mag, Inc. to Mag, LLC made at cost or is there some profit built into those payments?
A. There made at cost. There's no markup.
Q. So there's -- there's no margin to Mag, Inc. in those payments?
A. That's correct.
Q. The payments -- are the payments purely a pass through from Mag, LLC to Mag, Inc. to the employees?
A. That's correct.
Q. Okay. Now, you're not an expert in the operations at plant four?
A. That's correct.
Q. And the testimony you gave today about plant four was based on your conversations with Mr. Twite?
A. Yes, that's correct.

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MS. STARR: Okay. I don't have anything further for Mr. Talarico.
THE COURT: Okay. Thank you. Ms. Wencil, is there anything? Go ahead. Is there something else? You're not done?
MS. STARR: No, let's finish with Mr. Talarico. I apologize.
THE COURT: Okay. Ms. Wencil, do you have anything?
MS. WENCIL: No further, Your Honor.
THE COURT: Mr. Ratelle, any re-cross.
MR. RATELLE: Just one question for Mr. Talarico.
THE COURT: Okay.

EXAMINATION

BY MR. RATELLE:
Q. Just to be clear, Mr. Talarico, the capital expenditures would be appropriate to be incurred in order to produce in 2017 at the rates that you're currently producing, true?
A. The haul road actually will begin impacting

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production in -- in 2016, the haul road construction.
The high pressuring grinder roll is a 2017 -- that will be installed in 2017.
Q. And your understanding with regard to -- I'm sorry, Your Honor, I said one and -- the haul road to get access to additional minerals, has someone told you at Magnetation that the areas where mining is currently undergoing or occurring is running out of materials?
A. Yes. My understanding is that that -- they feed both fine material and course material and this haul road is to go to get course material as they are running out of course material.
Q. And do you have any time line as to when those materials will, in fact, run out or are you just anticipating that if you were to continue to produce -- excuse me, continue to produce iron ore concentrate into 2017 it would make sense to open up that haul road?
A. My understanding with discussions with the folks in operations is that they will -- they will need to be in that Orwell Danube basin by the end of October --

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Q. Okay.
A. -- of 2016.
Q. And in that particular expenditure -- well, let me back up.
Have the people at Magnetation indicated to you what the quantities of those materials are and the areas that are currently mined?
A. Not -- not specifically, just --
Q. Have they indicated that they are going to run out of those materials in the other areas that are currently mined?
A. Yes, that's much -- they are going to run out of the course -- the course material.
Q. Based on what level of production at Magnetation are they assuming that they will run out of that material?
A. At the -- at a rate of 5,500 tons a day out of plant four.
Q. Was there a memo that was prepared for you to that effect?
A. No, it was just --
Q. Who at Magnetation provided that information to you?
A. It was Matthew Lehtinen.
Q. The Matthew Lehtinen who's getting the

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favorable treatment through the settlement agreement? He's getting releases and payments and such under the Global Settlement Agreement, true?
A. He's getting releases?
Q. Yes.
A. Magnetation, Inc. is getting releases and officers and directors, yes.
Q. And he's an officer and director of Magnetation, isn't he?
A. Yes, he is.
Q. And he's also getting a million dollars because of the lawsuit on the wage claim, true?
MS. STARR: I am going to object. I think that mischaracterizes, Your Honor, the testimony that was given previously.
MR. RATELLE: If I could just --
THE COURT: You may ask the question. He said is it true, so if it's not true you can answer it's not true.
THE WITNESS: Magnetation, Inc. is getting the $1 million.
BY MR. RATELLE:
Q. And that's because of their payment --

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Magnetation's payment on behalf of Matthew and Larry Lehtinen, correct?
A. Correct.
MR. RATELLE: Thank you, Your Honor.
THE COURT: All right. Anything else?
MS. STARR: Your Honor, there have been a number of questions -- not for Mr. Talarico. I would ask that Mr. Talarico be released.
THE COURT: Okay. Any -- did I miss anyone here? Any questions for Mr. Talarico?
Thank you for your testimony today, Sir.
THE WITNESS: You're welcome. Do I leave these here?
THE COURT: Those were never admitted into evidence, Sir. You can leave them there and we will get them. That's fine. Thank you, Sir.
MR. RATELLE: (Unintelligible).
THE COURT: The microphone won't pick you up there, so you're going to have to go --

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MR. RATELLE: If I may, Your Honor, I will offer as statutory lien claimants exhibit --
THE COURT: We will just call it Exhibit 2. I'm not sure it matters.
MR. RATELLE: Fine. The plan for long-term lease No. 1 agreement dated February 14, 2013, and there's also an amendment that's included with that.
THE COURT: Is there any objection to that?
MS. STARR: Debtors do not object.
THE COURT: Anyone else? Okay. Exhibit 2 is admitted. All right.
MS. STARR: Your Honor, a number of questions were asked of Mr. Talarico with respect to mining in the properties around the plant four. Mr. Talarico obviously did not have a lot of personal knowledge with respect to those questions and was unable to answer in many cases those questions as a result.
The debtors would like to offer a witness, Mr. Joe Broking, who's here in the courtroom

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to testify just with respect to the issues around plant four so that we can have a clear factual record with respect to the mining that's happening on the properties that were questioned.
THE COURT: You can step up to the lectern.
MR. RATELLE: Your Honor, I am going to object to Mr. Broking being a witness. No. 1, he was never identified by the debtors as a witness in this matter.
No. 2, it looks like the debtors made their decision as to who it was they thought they would get this information and the evidence with respect to the lien claims that have been asserted by my clients and it turns out that Mr. Talarico was the wrong person to bring and put on the stand for that purpose and now the debtors are trying to fix that problem knowing now that he didn't seem to know what it was that he needed to know to be able to provide the fairly extensive testimony that he initially gave before he admitted he didn't know what he was talking about.

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Anyway, I don't think that it's appropriate that the debtors get to fix the problem by throwing a new witness that they haven't previously identified as one that was going to testify today.

THE COURT: Briefly, Ms. Starr.

MS. STARR: Yes. Mr. Ratelle asked a number of questions that were well beyond the scope of the issues that Mr. Talarico raised as well as well beyond the scope of what was in his briefs.

In addition, Your Honor, there's no prejudice here. The real point here is to make sure that all the facts are before Your Honor so that there's an opportunity for you to make a full and fair decision and Mr. Broking will testify and Mr. Ratelle can ask him every question he wants to ask so that he will -- there will be no -- no evidence that's brought in unless he's had an opportunity to scrutinize it and Your Honor has heard both sides.

THE COURT: Am I -- let me ask the relevance of this. Am I going to be able to, in any event, make a determination on

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their lien rights here today? I can't do that.

MS. STARR: Your Honor, I would agree. The question of what their liens with respect to plant four or any other property is not today's question.

The issue that they are raising is their rights -- their lien rights with respect to the receivables --

THE COURT: Right.

MS. STARR: -- that are being transferred.

THE COURT: Can I determine that today? I mean, doesn't that really require an adversary proceeding ultimately? You know, I can't determine they have no lien rights, they have valid lien rights. I think the issue has been raised that there's a question about their lien rights in those receivables certainly and they claim they have them. I am not going to be able to determine that today, am I?

Look at what's required in adversary proceedings. The real question is are their rights being protected, isn't that the

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real -- if they had any. You could say their rights -- you can establish later that they have none, I understand that. The rights to the extent they have them, are they being protected, isn't that the real question? We can put him -- we can take testimony from him, but ultimately no matter what he says, they would ultimately be able to bring -- to really establish -- to really establish this they would have to -- you know, they would have to bring in their own witnesses. You'd have to move and JP Morgan and AK Steel, ultimately if this were approved, whoever else, would have their rights to who say who was priority. It would be a very complex piece of litigation, it seems to me. I don't know.

Ms. McGreal, you're usually here for good news, but you haven't said anything.

MS. MCGREAL: I'll try my best on this one.

THE COURT: All right.

MS. MCGREAL: Your Honor, I think it's actually a very narrow issue for today. There are -- there are bigger issues here and

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I think that there will be additional evidentiary hearings and additional briefing on other issues, but for today's purposes, for the GSA, there are only two things being transferred, the PPA receivables and inventory.

THE COURT: Right.

MS. MCGREAL: And I think we have established and now may not be the time for arguing, but I just want to explain why we think it's important that Mr. Broking be on the stand and why I think Your Honor can actually decide today's issues today without further evidence is that the PPA receivables are generated from pellets that are made from concentrate that comes out of plant four.

Mr. Broking will be able to testify that there's actually been no mining on plant four, meaning that the argument that the statutory lien claimants made in their briefs, which is that they have a lien on plant four, and when I say plant four, I just want to clarify for the court because I think there's been a lot of confusion. I'm talking about the structure, the building or the

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facility that we call plant four, not the big compound that contains a lot of different parcels, but the structure that some of the statutory lien claimants helped erect, that plant four and the property underneath it. They claim to have a lien on the property and the minerals underlying it.

And the issue is that the concentrate and the pellets that were made from the concentrate don't come from the minerals underlying plant four. Mr. Broking will be able to establish that there's been no mining on plant four.

For today's purposes, the two transfers that are happening free and clear of liens are PPA receivables that are generated from pellets made from minerals not related to plant four and inventory, which we have established there's about $160,000.00 worth of inventory that's around plant four. We think all of that is subject to UCC liens from JPM and the bond holders.

THE COURT: Here's what I am going -- we can argue about it for a long time. I'm going to let -- we're going to

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eliminate questioning here. I'm not sure whether it has any relevance or not, we can decide later. I will let some very limited questions of him go forward, because in order to establish they don't have a lien on this I think may require a lot more than you think, but that's all right.

You can call him and this can be brief testimony to establish just the points you want. Of course, Mr. Ratelle can cross examine as well.

MS. STARR: Thank you, Your Honor. We appreciate it.

Magnetation calls Joe Broking.

THE COURT: All right. Sir, if you would step up and face the clerk to my left and your right. He will swear you in.

JOSEPH BROKING

A witness in the above-entitled action, after having been first duly sworn, testifies and says as follows:

THE COURT: All right, Sir. If

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you would take a seat in the witness chair. Once you're comfortable if you would state your name again and spell it for the record.

THE WITNESS: Good afternoon, Your Honor. My name is Joseph Andrew Broking, II. Last name is spelled B-R-O-K-I-N-G.

THE COURT: All right. Thank you, Sir. All right. Ms. Starr, whenever you're ready.

EXAMINATION

BY MS. STARR:

Q. Mr. Broking, what's your role at Magnetation?

A. My role at Magnetation is I am the chief financial officer of Magnetation, LLC and Magnetation, Inc.

Q. Now, are you familiar with the operations at plant four?

A. Yes, I am very familiar.

Q. How often do you go to plant four?

A. You know, from a frequency perspective, the frequency varies, but I would say typically I am out there at least once per month. The

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frequency can be much higher than that and when I do go to plant four it's really for two purposes. It's operational assessment and meetings with the management team, the local management team, at plant four as well as we do a lot of -- as you might imagine, as we have been trying to raise capital, we do a lot of investor tours, so we are touring the facilities and touring the mines with prospective investors.

Q. And were you present for the testimony that Mr. Talarico gave with respect to the plant four issues just now?

A. Yes, I was.

Q. Okay. I am going to show you a document, this is a map of the environment of plant four. First I am going to show this to Mr. Ratelle.

Mr. Talarico, what is this?

A. Mr. Broking.

THE COURT: It's been a long day. Give her a break.

BY MS. STARR:

Q. My deepest apologies. Let me try again.

Mr. Broking, can you describe what this

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is?
A. Yes. This is an aerial photograph of the plant four area, what we commonly refer to as the Canisteo pit complex for plant four, and it depicts the various parcels and more specifically the mining areas by which we are mining fine tailings for feed stock into the plant four operation.
Q. Now, this may be a little tricky, but can you identify where plant four is on this map and perhaps if you could show the judge what you're pointing to and also show Mr. Ratelle because we want to be sure that everybody understands what you're identifying as plant four on that map?
THE COURT: Why don't you show Mr. Ratelle first.
THE WITNESS: Yes, I can. (Unintelligible).
MS. STARR: You know, I think no one can hear you.
THE COURT: Well, I am not sure this is actually testimony.
MS. STARR: I think he should really just show him plant four.

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THE COURT: That's right. Just show it to him and he can determine.
THE WITNESS: (Unintelligible).
THE COURT: I will tell you what, we're not taking a break. We will go off the record for a minute or two. Why don't you all confer.
MS. STARR: Let's show him the map.

(A discussion was had off the record)

THE COURT: Okay. We can go back on the record now. All right. Whenever you're ready.
BY MS. STARR:
Q. All right. Mr. Broking, can you identify on the map where plant four is?
A. Yes, I can.
Q. And can you --
A. Plant four, I will hold this up and show it for the court as best I can, it's very small, but here you can see an aerial photo, Your Honor and everybody else.
Mr. Ratelle has confirmed that plant four is located right here on this map.
Q. Okay. Mr. Broking, does Magnetation do any mining at plant four?
A. Yes, we do.
Q. Okay. What do you do?
A. If I hold the map up again, the map really is a depiction of the plant four mining complex. It shows the plant facility, as I have already pointed out.
What the map also shows is the various tailings basins, which are the lighter colored areas here that are circled in colors for which Magnetation, Mag Mining specifically, mines fine tailings within fine tailings impoundments and it shows here, for example, the Buckeye complex. We commonly refer to this as the Buckeye mining area, the Buckeye tailings basin. Here is a very large series of tailings basins known as the Canisteo fine tailings basins and then up here is the Orwell Danube fine tailings basins.
What we do at this facility is we mine fine tailings today from these fine tailings basins. Those fine tailings contain iron

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bearing materials. Those materials are mined from these tailings basins and they are delivered both by 40 ton, 100 ton haul trucks to a dump pocket for which they dump their tailings load into the dump pocket whereby that material is -- we're done with the mining process at that point and then the materials goes through the plant and is beneficiated or converted from iron bearing tailings material to what we commonly refer to as merchantable iron concentrate, typically with a 55 -- 65 percent iron concentration.
Q. So the mining occurs in the tailings basins, it's them dumped and then what occurs in plant four is -- I believe you called it beneficiation?
A. Beneficiation.
Q. Just so we're clear, what is beneficiation?
A. Beneficiation refers to upgrading iron bearing material from a lower iron concentration to a higher iron concentration and like I mentioned, the fine tailings that we're currently mining typically average around 28 to 26 percent iron and that

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materials is beneficiated through a series of technology, including proprietary technology to a concentration of 65 percent iron.

Q. So what happens in plant four is not the mining, it's the beneficiation?

A. That's correct.

Q. Mr. Broking, are you familiar with which properties that are on the map that we're all looking at have liens from the mechanic's liens who are parties or entities that are represented here today?

A. Yes, I am. I have reviewed -- in my role as chief financial officer I have reviewed the liens and I am very familiar with which parcels contain mechanic's liens.

Q. Can you identify for the Court which parcels contain mechanic's liens?

A. I can. I will say that this isn't a parcel ID amp. It's an aerial photograph.

But generally speaking, the mechanic's liens are located on the plant site itself. That is where the Itasca County lease is as specific to these -- these mechanic's liens in question.

Further to that, there would be some

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miner's liens on this Buckeye area.

Q. Okay. Are there mechanics's liens on these other properties that you see here that are outlined mostly in yellow and green?

A. No, there are not.

Q. Can you just point to the properties that you're indicating that do not have mechanic's liens, to your understanding?

A. Yes. So again, the areas that are highlighted in yellow and orange up here, which again is the Canisteo fine tailings basin, this is the area that the majority of the mining has occurred at this complex from approximately the first quarter of 2015, the start-up of the facility through today.

Again, all these areas that are highlighted in yellow, the Canisteo fine tailings complex is where the mining has occurred, and none of those areas have mechanic's liens filed against them.

BY MS. STARR:

Q. Okay. Mr. Talarico briefly discussed or I should say Mr. Ratelle asked Mr. Talarico with respect to certain stock piles. Are there stock piles on the plant four piece which is the lien piece?

A. Yes. I want to clear up the stockpile question. When we initially built the plant there was some mining done to free up space for tailings deposition, so when we beneficiate the material we have to dump the fine tailings, for lack of a better word, dump the fine tailings into the dump pocket. Those tailings are then beneficiated and we create our own tailings that need to be deposited with any tailings impoundment.

So when we initially constructed plant four, we had to do some mining and stockpile that material such that we were making space for tailings deposition as part of the tailings management plan in the future.

As it relates to today, that material was all consumed very early on in late Q4 2014 and early Q1 2015.

Today there's just one very, very small stock pile left.

Q. Okay. Where is that stock pile?

A. On the map it's located right up in this area up above the Buckeye tailings basin.

Q. So it's the area in red?

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A. It's the area in red on this map.

Q. Just one moment, Your Honor.

Just so we're clear, is there any mining going on on the parcel, the lien parcel, that contains the plant four facility?

A. No.

MS. STARR: Your Honor, I have nothing further.

THE COURT: Okay.

MS. STARR: As promised, brief.

THE COURT: Anybody have any cross? Mr. Ratelle might. Okay.

MS. STARR: Shocking. Shocking, indeed.

EXAMINATION

BY MR. RATELLE:

Q. I think, Mr. Broking, you have a map and this also is just a different (Unintelligible).

MS. STARR: Do you have a copy?

MR. RATELLE: Yes.

MS. STARR: This one?

MR. RATELLE: Correct.

MS. STARR: Thank you very much.

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BY MR. RATELLE:
Q. Can you -- do you have a pen with you? Can you mark the mining areas or identify the mining areas on the map that I just handed to you?
A. I sure can. I will hold this up for the court as well. One of the -- so most of the mining that's occurring today at the plant is occurring up off this map. The Canisteo basin extends from here up off the picture so if I were to reference that back to this map, again, we're looking at this area that extends up in this direction.
Again, as I think about the map that I was just handed, the Canisteo basin starts here and moves up to the north and the east, so all the mining is happening up in this area.
Q. So if I could just (Unintelligible). Where is the --
THE COURT: Put the microphone between the two you there so we can pick up Mr. Ratelle and, Mr. Ratelle, you really do need to ask to approach the witness actually.
MR. RATELLE: I'm sorry.
BY MR. RATELLE:

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Q. Can you identify on the map that I have handed to you where the depiction of plant four is?
A. So I can. Again, I can get very, very general here, but the plant really exists sort of in this area, generally speaking, and then this is -- again, this is a stock -- this is an above ground pile. Again, it's in this general area, Mr. Ratelle.
MS. STARR: Could you just ask the witness to hold it up because we can't see what he's marking.
THE WITNESS: This plant is in this general area.
THE COURT: Ms. Starr, you can approach the witness if that's helpful.
MS. STARR: My vision is not so good that I can see up there.
BY MR. RATELLE:
Q. Where you have put the circle right now that's plant four, so that would correspond with this?
A. Yes.
Q. And then the areas, if I may -- in the areas that are adjacent to where you have got the circle for plant four, that's the Canisteo -- what's it called?
A. This is the Buckeye. This is the Buckeye basin right here which again you can see right here on this map (Unintelligible). The Canisteo -- the Canisteo area is up in here.
Q. What is this area (Unintelligible)?
A. That's Canisteo.
THE COURT: If this is ultimately intended for me to look at it, what you might want to do is mark it up and we can take a break to do it, if you'd like, and if the people -- if the attorneys will agree to stipulate to it, you can actually write on there these places you're talking about and then later on I can look at it or I can give you my version, too, and you can do it twice. If you are going to ultimately have this into evidence, we can handle it that way.
Do you want a couple of minutes for the three of to go through that?
MR. RATELLE: Yes, just to go through this and just mark it up.
THE COURT: Let's go off the record for just a couple of minutes.

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(A discussion was had off the record)

THE COURT: Whenever you're ready, Mr. Ratelle. We are now on the record.
MR. RATELLE: Thank you, Your Honor.
We have tried to -- we have tried to translate the Magnetation, Mag Mining, LLC, plant four mining area to the county's GIS map so that we have some notion of the areas that are involved, so I will offer both of these.
MS. STARR: Yes, we would not object to the offering of these two maps into evidence.
THE COURT: So they can be admitted into evidence. We're up to three and four and you can put down --
MR. RATELLE: (Unintelligible) Canisteo mining areas, but they go further north than what's depicted (Unintelligible).
THE COURT: So those are exhibits, what, three and four?

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MR. RATELLE: Yes.
THE COURT: Are there two or three of them.
MR. RATELLE: (Unintelligible).
THE COURT: So three would be the county map and four would be the larger map that was ultimately brought to the witness' attention by the debtor's counsel.
BY MR. RATELLE:
Q. Mr. Broking, let me hand you mechanic's lien statement filed by Hammerlund Construction dated April 3, 2015.
A. Thank you.
Q. I believe you're familiar with this document as you have testified you looked at all the mechanic lien statements that have been filed.
A. Yes, I am.
Q. All right. And so you're familiar with this one as well?
A. I am.
Q. Okay. And if you would --
MS. STARR: Do you have a copy, Mr. Ratelle?
MR. RATELLE: Yes, that's what I

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am looking for. Actually it's attached to my -- it's attached to my --
MS. STARR: I think we have it.
THE COURT: All right. Generally, if you don't have copies show it to Ms. Starr first and then the witness, but she has a copy.
BY MR. RATELLE:
Q. Let me direct your attention to Exhibit A, to the mechanic lien statement, to Exhibit A that's attached to the mechanic/miner's lien statement, and here there are five separate quarter sections that are identified as subject to the miner's lien, mechanic's lien of Hammerlund.
Do you see that?
A. I do.
Q. And have you identified all those five quarter sections?
A. I have in the past, yes.
Q. Okay. And is it your testimony that all five quarter sections relate exclusively to plant four?
A. Yes. My testimony, as I stated earlier, was that they relate to plant four as well as a

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portion of the Buckeye.
Q. But whether it goes north, you don't know?
A. No, I'm certain that it does not extend north up into the Canisteo.
Q. Okay. I have another map that's sitting on your table there, Mr. Broking. Yes, that one.
Are you familiar with these types of maps?
A. Yes, I am.
Q. What are they? What is this map?
A. This is -- it looks like a copy of a plat book.
Q. Okay. And this identifies the area described as 56N and range 25 west, correct?
A. That's correct.
Q. All right. And the map itself is blocked up into areas, correct?
A. Yes, sections.
Q. Sections, and each section is approximately how many acres?
A. 640.
Q. And within these sections there are quarter sections, correct?
A. That's correct.
Q. And what is the acreage of a quarter section

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within a section?
A. I am a little slow with my math, but it would be one-fourth of the number I just stated.
Q. Okay. Within the quarter sections there are -- there are additional quarter sections, correct?
A. Correct.
Q. And about 40 acres a piece?
A. Correct.
Q. If you -- if you look at the area in which plant four is located on this map, and you can see where it is, it's the -- it's the quarter section or rather it's the section that is on the far right-hand side of the map and the section above the one on the very lower right, right-hand corner of the map, true?
A. No. Again, looking at this, this particular map, you said the lower right.
Q. And it's the section right above.
A. Yes, this is call Coleraine, Minnesota. This is --
Q. On the right. You're going to the left.
A. Yes, I'm -- okay. Yes. Exactly.
Q. Go to the right.

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A. Exactly. I got it.
Q. And plant four isn't in the furthest right-hand corner section, but it's in the section that's immediately to the north of that one, correct?
A. Actually I would ask that you point to me on this map what you're looking at, Mr. Ratelle.
MS. STARR: If I could just see what you're pointing the witness to, Mr. Ratelle.
THE WITNESS: I'm sorry. That's the wrong map. He was referring to plant two. (Unintelligible).
MS. STARR: With your permission, Your Honor, can I look at the map at the same time?
THE COURT: Yes, you may. You may approach the witness.
MS. STARR: Thank you, Your Honor. (Unintelligible).
THE WITNESS: Excuse me, Mr. Ratelle. This is the same map.
BY MR. RATELLE:
Q. All right. So I would like to direct your attention to the lower right-hand corner of

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the map. There's a section that's on the lower right-hand corner and the one that has plant four is the one right above it, the section immediately to the north.
A. Correct, Section 25.
Q. Right, and if we could take a look at the legal description that accompanies the Hammerlund mechanic lien, if you take look at Exhibit A, so if you can imagine quarters sections within the section, all right, and the first one is the northwest one quarter of the southwest one quarter, okay, or the southeast one quarter. That's the first legal description, so you take a quarter section within -- within the section and you look at the northwest one quarter of the southeast one quarter. Okay?
The next one is the northeast one quarter of the southeast one quarter, so it's the northeast quarter of the southeast quarter.
Are you with me?
A. I am.
Q. And then let's go up. The next one is the southwest one quarter of the northeast one quarter.

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Do you see that?
A. I do.
Q. Okay. That's not the Magnetation plant, is it, Sir?
A. No, it is not.
Q. Okay. In fact, it's north of the Magnetation plant, isn't it?
A. Just give me one second here to look at this. Again, it's difficult to look at a plat map. I mean I understand what we're trying to do here, but it's very difficult to look at a plat map without an aerial photograph, especially a plat map. A GIS map would be very helpful.
Q. Which you have in front of you?
A. No, I don't actually. You took that and --
Q. And made it an exhibit?
A. Correct.
Q. Let me give it back.
A. Give me just one second to look at this. My eyes aren't what they used to be. I have to be honest with you.
Can you repeat the question?
Q. Right. The southwest one quarter of the northwest -- of the northeast one quarter,

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I'm sorry, the southwest one quarter of the northeast one quarter, that's -- that's the quarter that's north of plant four and does not include plant four?
A. I would generally agree with that, yes.
Q. And then the next is the southeast one quarter of the northeast one quarter and that's also north of plant four, correct?
A. I would say it's -- you know, that one is a little bit more difficult to confirm just looking at that. I would say that may be right, but we would have to zoom in a little bit to see for certain.
Q. Well, when you were testifying that you sat down and looked at the Hammerlund mechanic lien miner's lien statement and confirmed that it doesn't include any part of the mine that you outlined on the GIS map that we handed up to the court, these descriptions indicate that, in fact, the property description included in these lien statements include part of that property.
A. Just to be clear, the section that we're talking about in question is Section 25 right here and I did -- that's exactly where I

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generally drafted the plant location, so again, what I was saying is that the mining has occurred up out of Section 25 where there are no mechanic's liens asserted and I have, in fact, confirmed exactly what you are saying that there are mechanic's lien asserted against this small area of land which you're describing and what this legal description describes.

Q. The last legal description is the southeast one quarter of the northwest one quarter of Section 25, Township 56, Range 25.
Do you see that?

A. I do.

Q. And that again is an area that's north of the plant, correct?

A. That would be generally correct, yes.

MR. RATELLE: I have no further questions.

THE COURT: Thank you, Mr. Ratelle.

Ms. Starr, do you have any re-direct?

MS. STARR: No, Your Honor. I don't have any re-direct.

THE COURT: All right. Thank

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you, Mr. Broking, for your testimony today.

THE WITNESS: Thank you, Your Honor.

THE COURT: I take it no one else -- thank you for your testimony today, Mr. Broking.

THE WITNESS: Thank you.

MS. STARR: Your Honor, Magnetation, LLC does not have any further witness to present in connection with this.

THE COURT: Do you rest?

MS. STARR: Yes.

THE COURT: All right. All right.

Ms. Wencil, do you have any case to put on here?

MS. WENCIL: No, Your Honor. (Unintelligible).

THE COURT: Okay. And anyone -- before I get to Mr. Ratelle, anyone else?

MR. RYAN: Yes, Your Honor. Dennis Ryan for AK Steel. We would like to put on a witness briefly regarding AK Steel's role in the negotiation of the GSA.

THE COURT: Well, the problem I

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have, as I mentioned earlier, is that your responses came in late on this.

MR. RYAN: Your Honor, our's not an objection. It's a reply to an objection. We had no basis to file anything until someone had already objected and we feel there were factual misstatements, so we filed a reply and gave notice of our witness in that reply.

I realize the local rules are silent on the issue of replies. We certainly considered that, but we couldn't file anything on the 19th because we had nothing to reply to. If they -- indeed, if no objection had been filed we would not have filed anything.

THE COURT: I had also -- I also entered an order on this. Let me think about this.

What issue is this coming in on?

MR. RYAN: The objectors have claimed that AK Steel is getting consideration on account of its equity, that it was an insider, that it didn't negotiate at arm's length or in good faith.

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THE COURT: Ms. Starr, do you have any objection?

MS. STARR: No, Your Honor. We have no objection.

THE COURT: Ms. Wencil, do you have any objection?

MS. WENCIL: No, Your Honor.

THE COURT: Mr. Ratelle, do you have any objection?

MR. RATELLE: Actually, I do, Your Honor.

THE COURT: You have to come up to the lectern.

MR. RATELLE: Thank you, Your Honor.

I do object to this testimony on a number of grounds. Firstly, it was a motion that was served out and filed by the debtor at the end of August. At any time between then and the date that any responses were filed AK Steel could have for its own reasons provided a filing in support of the -- of the debtor's motion, so waiting for a response was not necessary.

Secondly, once the responses came in in

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light of the court's order and in particular the order that the court issued a week ago last Friday making it very clear that you put everybody on notice this is -- this is what the court has and this is what it's going to be working with going forward, Mr. Ryan, if he felt compelled to provide a response even at that time could have sought some relief from this court in order to file a reply to address these issues.

So from my standpoint, I think it's untimely and object to AK Steel putting this witness on.

THE COURT: The one thing I am going to ask is one possibility, of course, would have been to coordinate with the debtor and the debtor could ask for leave to bring on a witness at this point as well. I don't know if you want a little bit of time to talk to the debtor about it. Even though they've rested, I can reopen their case. That would be a possibility. You can come and address the court and ask for leave.

MR. RATELLE: Thank you, Your Honor.

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MR. RYAN: We did not intend to file anything. We were comfortable with what the debtor filed and comfortable with that, but when we saw the objections, particularly of the mechanic's liens holders and the Ad Hoc Committee, they raised factual issues regarding the conduct of AK Steel in connection with this agreement. That we felt needed a response, needed a factual response.

We gave notice. We filed as brief, frankly, a reply as we could simply stating the facts that we thought were incorrect and gave notice that Mr. Alter would be proposed as a witness.

Parties have had that since last Friday, whenever it was filed, so they have had notice that we intended to call him, so it's not a surprise.

I don't see what the prejudice is and the debtor really is not the right party to be calling someone from AK Steel to testify about AK Steel's activities.

THE COURT: Those objections were filed, if I am correct, on the 19th of September and you didn't file anything for 11

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further days after that. I entered an order, so there was time in which you could have done that, you know, and even five days prior to the hearing, which would have still been after my order -- after my time on the 19th, still didn't get anything until Friday.

The problem I have is that people can do this at the last minute. It's not even within five days of this hearing date. I am not going to allow it.

MR. RYAN: Thank you, Your Honor.

THE COURT: Okay. All right. Again, if the debtor has another witness, I can -- I can consider -- I can give you time as well to talk about that.

MS. STARR: Your Honor, I think at this point the best thing -- the debtor has rested. The debtor will continue to rest and will not be calling another witness.

THE COURT: All right. Okay. Mr. Ratelle, do you have any case?

MR. RATELLE: Thank you, Your Honor. John Stene.

THE COURT: Sir, you have to stand here and raise your right hand and the

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clerk will swear you in.

JOHN STENE

A witness in the above-entitled action, after having been first duly sworn, testifies and says as follows:

THE COURT: Thank you, Sir. If you would take the seat over there and state your full name and spell it for the record.

THE WITNESS: My name is John Stene. It's spelled S-T-E-N-E.

THE COURT: Okay. Thank you, Sir. Mr. Ratelle.

MR. RATELLE: Thank you, Your Honor.

EXAMINATION

BY MR. RATELLE:

Q. Mr. Stene, you are employed by Hammerlund Construction, correct?

A. That is correct.

Q. And what is your position at Hammerlund

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Construction?
A. I'm the chief financial officer.
Q. In connection with your duties as chief financial officer, I believe that there is a copy of the mechanic's lien statement that -- mechanic/miner's lien statement dated April 3, 2015, that was recorded by Hammerlund Construction with Itasca County recorder on April 6, 2015.
Do you have that in front of you?
A. I do.
Q. If you look at the second page of that document, do you recognize your signature?
A. I do.
Q. And you understood that you signed this under oath?
A. I do.
Q. If you could look at Exhibit A to the -- to the mechanic lien statement, and what I -- I asked the court for the GIS map that was marked up by Mr. Broking so I can show Mr. Stene.
Let me hand you what's been marked as Exhibit 3, Mr. Stene. I am going to hand you a yellow highlighter and ask you to mark out

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where in the circled area property that (Unintelligible)?
MS. STARR: Your Honor, can I just have permission to approach to see the document?
THE COURT: You may. You may. You're going to have to repeat the question.
MR. RATELLE: I will ask it again.
THE COURT: It didn't get picked up by the microphone.
MR. RATELLE: No problem.
BY MR. RATELLE:
Q. Mr. Stene, I have handed you -- I have handed you Exhibit 3 that had been marked by Mr. Broking identifying an area on that map that included part of the -- I am going to mispronounce it, Canisteo.
A. Canisteo.
Q. Canisteo mining area and that's marked with a circle in pen. I have handed you a yellow highlighter and asking you to identify parcels within that circled area that are included in your lien statement?

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MS. STARR: Why don't you do it and (Unintelligible) when you're done.
THE COURT: That's fine. (Unintelligible).
MR. RATELLE: I will offer (Unintelligible).
THE COURT: Well, you have to get to the microphone, for one thing.
MR. RATELLE: I will re-offer Exhibit 3 with the yellow highlighting prepared by Mr. Stene.
THE COURT: It's already into evidence. I think that Ms. Starr had no objection to the yellow highlighting.
MS. STARR: No, Your Honor, I have no objection to the yellow highlighting.
THE COURT: Okay.
BY MR. RATELLE:
Q. These are -- Mr. Stene, these are areas in which Hammerlund provided activities for the opening and maintenance of the mine, correct?
A. That is correct.
Q. And the work that was performed by Hammerlund Construction in that regard extended to stock piling and de-watering these mining areas.

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Is that correct?
A. Can you restate that question?
Q. Sure. The work that was performed with respect to mining included Hammerlund Construction stock piling and de-watering the mining areas?
A. And de-watering, correct.
Q. It also includes the extraction of tailings from the southern portion of the Buckeye No. 2 tailings basin and stock piled in the northern portion of the basin?
A. Correct.
Q. It also includes the excavation and abatement Buckeye to Canisteo south, excavation and abatement to Canisteo northwest to Canisteo south, road construction Buckeye to plant four, dump truck and road construction plant four truck dump to Canisteo?
A. Correct.
Q. And the work that Magnetation or that Hammerlund has performed in that regard extends also to the appurtenances of the mine which include plant four, correct?
A. Correct.
Q. And pursuant to the terms of the mechanic's

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lien statement filed as of -- as of April 3, 2015, the amount that remained unpaid to Hammerlund, at least in this lien statement, is identified as a $1,125,000.00, but an amendment to this lien statement was subsequently provided and filed on July 9th, 2015, increasing that amount to $1,174,000.00 because the unpaid invoices related to the work performed by Hammerlund had been incorrectly added up.

A. That is correct.

Q. When Mr. Broking testified that in his opinion there was no part of the lien statement that was filed -- that has been filed or was filed by Hammerlund that includes the Canisteo area, he disagreed with that?

A. Based on the maps that I am looking at, yes, I would think that we touch into the Canisteo.

Q. In fact, the work that was performed by Hammerlund at the request of Magnetation did specifically involve the Canisteo area, didn't it?

A. It included parts north, which from the maps

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I have looked at, would appear that it hit the southern edge of the Canisteo bits.

Q. In fact, the Canisteo area specifically called out in the purchase orders that were issued by Magnetation for Hammerlund to perform work?

A. To the best of my knowledge, that's correct.

MR. RATELLE: That's all I have you, Your Honor.

THE COURT: Thank you.

Let me just make an announcement here that I've been asked to make from security. If you're leaving the building, you need to check in with the security guard on the first floor. Otherwise, you may set off the alarm when you're exiting the building and you don't want that to happen.

Let's see. I assume, Ms. Wencil, you have nothing?

MS. WENCIL: Correct.

THE COURT: And Ms. Starr, do you have any cross examination?

MS. STARR: Just a moment. If you can just give us one moment?

THE COURT: Yes, you may.

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MS. STARR: Your Honor, just a very few short number of questions.

THE COURT: Go ahead.

EXAMINATION

BY MS. STARR:

Q. I'm Amelia Starr. I'll be asking you a few questions.

Sir, did Hammerlund lien the entirety of the Canisteo property, and maybe I'm now mispronouncing it?

A. Canisteo. I am not familiar with how far up the Canisteo property goes. These are areas -- they are not formally marked. They are more known by their old mining names, so I am not sure exactly how far north the Canisteo pit goes. I think our lien touches on the south end.

Q. So you didn't lien the entirety of the Canisteo property.

Is that correct?

A. Again, I don't exactly know how far it goes. I don't believe I did, but I could be incorrect on that.

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Q. If we look, Sir, on the map --

THE COURT: And you may approach the witness.

MS. STARR: I ask every time and this time I forgot. (Unintelligible).

BY MS. STARR:

Q. Now, Sir, if you can just point to where you believe that your (Unintelligible) touched the Canisteo property, and just to make the record clear (Unintelligible)?

THE COURT: Mr. Ratelle, you can approach the witness if you want to see what he's doing, that's just fine.

THE WITNESS: (Unintelligible) I am not a registered surveyor. I don't think Mr. Broking is. I mean, we're trying to be accurate.

BY MS. STARR:

Q. Would be easier for you, Sir, (Unintelligible)? This is not an attempt to (Unintelligible)?

A. (Unintelligible).

THE COURT: Make sure it's clear which markings are his because now there are not a lot of markings there and I am not

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seeing any of this.
THE WITNESS: Those are the 5 acres (Unintelligible).
MS. STARR: (Unintelligible) that's fine.
THE COURT: That's fine. He can actually write his last name. That's probably better. Thank you.
THE WITNESS: (Unintelligible).
MS. STARR: Thank you. I don't have anything further.
THE COURT: Okay. Mr. Ratelle, any re-direct.
MR. RATELLE: Yes.

EXAMINATION

BY MR. RATELLE:
Q. Mr. Stene, are you aware that lien property --
THE COURT: Hold on a minute, Ms. Starr, do you have still have the exhibit here?
MS. STARR: Yes, I'm sorry. I walked away with it.

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THE COURT: That's actually already been admitted into evidence.
MS. STARR: My apologies.
THE COURT: Approach the clerk and -- yes.
BY MR. RATELLE:
Q. Mr. Stene, there's no question but that work that you performed included the Canisteo area?
A. Yes.
Q. One more time?
A. Canisteo.
Q. Canisteo. And are you also aware that under Minnesota law that when property is under common ownership and work is performed on contiguous properties that the law allows a lien claimant to extend its lien on to that contiguous area?
MS. STARR: I am going to object on foundation. There's no evidence or suggestion so far in the testimony that Mr. Stene is a legal expert to give opinions on Minnesota law.
THE COURT: That's sustained. If you can establish that or ask the question a

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different way. The objection is sustained.
BY MR. RATELLE:
Q. In any event, Mr. Stene, there's no question that you did work on the Canisteo -- on the Canisteo area and whether or not you can at this juncture extend that lien beyond the specific area identified in your in mechanic lien statement, if it's all in service of a particular area you have -- you have that option available to you?
A. That is my understanding of the law.
MR. RATELLE: Okay. Nothing further, Your Honor.
THE COURT: Thank you, Mr. Ratelle.
Any re-cross, Ms. Starr.
MS. STARR: No, Your Honor.
THE COURT: All right. Mr. Ratelle, do you have any further witnesses? Do you rest?
MR. RATELLE: I don't. I rest.
THE COURT: All right. In case that didn't get picked up in the recording he did rest.
MR. RATELLE: Statutory lien

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claimants rest.
THE COURT: Okay. Thank you.
Does anyone else here have anything? All right. It is 7:10. We have got a couple of options. We are ready for closing arguments which will have to be -- no matter when we do them they are going to have to be somewhat brief. We can do them tonight. I'm perfectly fine doing them tonight. People may have flights and all that. I will let the parties consult.
The only other option -- the only other options that exist would be early tomorrow morning. I got a full day tomorrow, so it would have to be from 8:00 to 9:30 in the morning or Thursday which probably doesn't work. We're probably getting too late and too close to Friday which is at least some sort of a deadline here.
I will let the parties think about that. A couple of comments, though -- we will take a short break and let people regroup, consider that. Maybe we will even do that without a taking a break and then we will take a break before. If we are going to do

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them tonight, then we will take a break and let people at least get their thoughts -- gather their thoughts.

A couple of thoughts, though, on this last bunch of testimony on the liens, make sure you address in closing arguments how I can establish whether there is or not a lien based on the testimony I have heard today and only hearing from one lien claimant.

Actually, Sir, you can go sit back down. I'm sorry, I didn't excuse you. Thank you for your testimony. Maybe it's more comfortable up there.

Now, it seems to me there -- it would seem there's an easy solution to the problem if the parties would agree to it. Maybe there's a lot more problems than I know of and sitting up here and back there I don't know what's going on, and I can't know what's going on back in those conference rooms, but it does seem that they either have some kind of a lien or they don't and somehow that can be addressed in the order and certainly the secured creditors can address that in some manner.

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My presumption is this has got to be handled in some kind of adversary proceeding ultimately if they are claiming they are binding the secured creditors. It's going to have to be handled in some matter.

You can explain why I don't need to do that and why I can rule on it. I need to hear from the all the lien holders. I only heard from one, just one lien, and I heard some testimony about all the liens at least from the debtor's attorney -- from the debtor's witness, so that's one issue.

The second thing -- again, I will listen to everything everyone has to say. In view of what occurred this morning with the Ad Hoc Committee, I still have some questions on the employee retention plan, whatever the word is we use for that plan. I have some questions on that plan about why is it really ripe for today in view of some of the testimony I heard or should we wait and see if something gets consummated here in the short term and that being severed and heard later. There may be reason to do that.

Those are my initial comments. I will

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warn all the parties I have a number of questions, so -- and we're going to limit time on this, whether we do it tonight or tomorrow, so we won't have an unlimited period of time.

For anyone who also wants to speak besides those, they can ask for leave of court to make some brief comments as well. If people want to -- I know some of the people have dropped their objections, but I will take short comments on those. I'm not sure of the time. It would still be in the hour and a half range whether we do it tonight or whether we do it tomorrow morning. That's probably all we're going to do. We're all here, I think tonight would probably be preferable.

I have to leave it up to the three parties really that are the three main parties here that have put on evidence here today or have cross examined to think about that.

If you would like a few minutes, you don't need to tell me.

MR. RATELLE: If I could, Your Honor, there's one issue that I have which is

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I would like to have a copy of the modified order to know exactly what this is going to look like as it's presented to you. To some extent we're kind of shooting at a moving target and --

THE COURT: Well, that may be true, but that's what we're stuck with. I understand that. It's not perfect here. I don't disagree with you, Mr. Ratelle. I agree with you, but I don't think there's anyway we are going to get that done in view of the time. You can certainly raise that as part of your issue, but I think based on the last version of the order and with what Mr. Fleck -- he's still here, what Mr. Fleck had added, I think clarified a couple of times for us. I think we have at least a good feeling for what that change would be.

If there are other changes I would ask Ms. Starr to let you know what those are, additional changes that have not been either put on the record today or that's the best we can do with it. I don't think doing it tomorrow morning isn't probably going to improve that problem either. I don't think

they'll get anything out tonight.
I won't take a break. I will let the three parties or anyone else who wants to huddle over here and determine what their thoughts are. If you disagree, I will decide, of course, but I will let the three parties see if they can come to some agreement.

(A discussion was had off the record)

MS. STARR: Your Honor, we have conferred with, I believe, everybody who has a view and the agreement is we're happy to go forward this evening with the guidance that Your Honor wants no more than about an hour and a half of argument total and that, you know, we take the point that Your Honor is looking less for speeches and more to get answers -- questions answered.
THE COURT: And I have already raised a couple. And how much time do the parties need to prepare now? I think it's worth taking a break and I do that to protect my clerk and my court recorder here, so how

much -- let them stretch their legs and everything, but how much time do you think you need to prepare?
MS. STARR: I think if we could get 15 minutes to get our thoughts together we would be appreciative.
THE COURT: Mr. Ratelle, does that sound about right?
MR. RATELLE: Yes, that sounds acceptable, Your Honor.
I failed to introduce the mechanic/miner's lien statement that both Mr. Broking and Mr. Stene testified to and I have talked to Ms. Starr and I will offer those Exhibit 5.
MS. STARR: The debtors have no objection to the introduction of the exhibit.
THE COURT: All right. Very good. Exhibit 5. Does anyone else have any objection? Exhibit 5 is then admitted.
All right. We will take a break. I have mentioned some of the issues. I don't know if those -- some of those issues could help resolve this, but you have 15 minutes. It's 7:20. We will start-up at 7:35. I will come up with some kind of an amount of time for

the parties. I'm assuming Ms. Wencil won't need as much time as the two.
Is that correct?
MS. WENCIL: (Unintelligible).
MALE SPEAKER: Your Honor, if I could have a couple of minutes to argue as well on behalf of JP Morgan as the pre-petition secured lender.
THE COURT: You may have a couple of minutes. Yes, I can take -- let's make note of who wants time. Anybody else who wants time?
MALE SPEAKER: Your Honor, if I could just have a short --
THE COURT: We're off the record.

(A recess was had in the proceedings)

THE COURT: All right. Thank you and I would like to thank everyone for their patience today. It's been a long day for everyone and I appreciate everybody's patience. I only noticed a few people falling asleep which was pretty good. I appreciate that.

Do you remember what I said about security, too? When we get out, we can help you with that. When we are all done, make sure you check in with the person down there. We'll help you with that. When you're leaving we'll help with that issue.
All right. One quick question on this -- I know there's certain deadlines on this, so I have got -- what I'm thinking is I will announce my order on Thursday, probably in the morning and let me -- does that -- whatever I decide. I don't remember if that -- if that presents a problem should I decide in favor of the debtors. I can't remember if that's already too late or what.
MS. STARR: Your Honor, if you can issue an order in the morning, we believe we can make that work in terms of timeline that's been laid out.
THE COURT: The problem is I am totally booked tomorrow, unfortunately, so what we will probably do is setup a -- to do this we will setup a telephonic -- it will be telephonic and we will set it up -- we will announce it later, but sometime in the

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morning as you just suggested. The morning of Thursday should work.
All right. What I am going to do is I have divided the time up and you don't need to use all your time. The debtors I am going to give 30 minutes. They can reserve a little bit of time for the end if they would like. Mr. Ratelle, 30 minutes as well.
Ms. Wencil, I put down five, but if you need a little bit more, you can take a little bit more. I wasn't sure how much to put down for you. Mr. Fleck, five minutes. JP Morgan's attorneys, five minutes. And it sounds like almost no time is necessary for the John Morgan one if they are just doing a joinder, but they can have a couple of minutes as well.
Is there anyone -- did I miss anyone who would like to speak?
All right. So it is now 7:42, so we will start with Ms. Starr.
MS. STARR: Thank you, Your Honor, and thank you so much for today. This has been a long one for all of us and we appreciate for you and also for your

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chambers, their patience and help.
What we're going to be doing, Your Honor, is that I will be addressing the GSA fairness related issues that were the subject of much of the testimony and then Ms. McGreal is going to be addressing issues specific to the incentive and the wind down incentive and retention plan as well as the mechanic's liens.
THE COURT: All right.
MS. STARR: So as -- I said this in the beginning and I will say this at the end, this is not the motion that Magnetation, LLC wanted to bring. This is -- we believe for a very long time and really only until the very end that we were going to find away to re-emerge and we are hopeful that with the proposed transactions that have been described here by the bond holders that, in fact, there maybe a way for Magnetation's business after liquidation to live on, but that is -- that's a question for another day, not the question for today.
Today we have to talk about the GSA. There's really three strands of attack on the

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fairness of the GSA.
The first is that the sale process whereby Magnetation, LLC attempted to find a buyer was somehow tainted, unfair, unreasonable, not appropriate and not really a test of whether there was a buyer out there for Mag, LLC.
You have now seen through the testimony of Mr. Buschmann and the testimony also, to a lesser extent of Mr. Talarico, all of which is, by the way, completely un-rebutted. There is no evidence to the contrary that this was a very fulsome, very aggressive, very thoughtful sales process where every possible buyer was vetted. Every possible opportunity was explored and every possible transaction structure was tried on for size.
This was in full and fair good faith. Magnetation did everything they could to find a buyer and they simply were not able to do so and they were not able to do so for a whole variety of reasons that have been spelled out by the witnesses, but issues that were ultimately not able to be addressed.
Now, there was some suggestion in the

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objections, some of which are withdrawn and maybe some of which are still in place, that this process was tainted because buyers couldn't see the AK -- I should say the pellet purchase agreement.
Again, the testimony here is un-rebutted. When these buyers walked away it was our under -- the understanding of Mag, LLC and the Mag, LLC financial advisors, they were walking away for a lot of reasons.
They were walking away because they didn't want to buy a company that only had one customer.
They were walking away because, frankly, they didn't want to buy in to this industry because the IODEX was a risky and volatile time.
They were walking away because of the serious litigation overhang based on the AK Pellet Purchase Agreement assumption and the -- and the purchase price adjustment litigation, but they weren't walking away because somebody didn't get the Pellet Purchase Agreement and, indeed, Mr. Buschmann testified and it is un-rebutted that he

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was -- that no one ever expressed to him and he had no understanding that anyone ever walked away because they didn't have access to that agreement and, indeed, that made sense to him because these buyers were not looking to buy the business and continue with the Pellet Purchase Agreement.

What they were really looking to do was to buy it in a consensual manner and work out a new agreement with AK which proved to be impossible.

And I think the proof is really in the pudding even when parties did get the Pellet Purchase Agreement, including the party that we have discussed who received it after signing an NDA with AK Steel, they still walked away. They looked at it. They talked to AK Steel and they said, no, we are not interested in buying this company and bringing it into emergence.

They may be interested in a post-liquidation type transaction, as has been discussed before, but they are not willing to buy this company and bring it to emergence.

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The first question is is there an alternative in the form of a transaction where Magnetation, LLC is bought and brought into emergence by a third-party investor and is the answer is no, that is not a choice. That is a choice that's been explored fully and fairly and we have not received not a single actionable, financed proposal, not even one.

So the next question is in the negotiation of the GSA, was that negotiation somehow tainted so that it wasn't fair or reasonable or truly representing the interest of the debtor and there have been some allegations that either the negotiations with Mag, Inc. were tainted because they were -- because of the relationship there or the negotiations with AK were somehow tainted and they were not fair. They were at arm's length, to use -- I think the word we really want to focus on.

Again, we put on extensive testimony, both from Mr. Buschmann and from Mr. Talarico that these negotiations were fair, arm's length, very contentious and adverse negotiations.

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Mag, LLC was represented in those negotiation by an independent committee made up of Mr. Talarico and Mr. Beckman, both of whom owed duties only to Mag, LLC. No duties to Mag, Inc. No duties to AK. No duties to nobody else. They represented fully and fairly those interests and they negotiated at arm's length, first with AK. And how do we know? We know because these were lengthy negotiations. They -- they were able to retain through those aggressive negotiations a number of concessions from AK Steel, many of which were described both by Mr. Buschmann and Talarico and those are not just small concessions. Those were concessions that had real economic value to the debtor allowing them to sell more pellets, to make more money, allow them to fund a wind down budget that's going to allow an orderly and appropriate wind down that will protect the company and its employees as well as obtaining other forms of economic support.

The negotiations with Mag, Inc., similarly untainted, arm's length. Both parties were separately represented. Both parties had

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separate counsel, separate financial advisors and, again, there was an arm's length negotiation. Requests were made, command -- counter offers were made and compromises were reached. Mag, Inc., didn't get everything they asked. Mag, LLC didn't get everything they asked. It's the essence of promise.

So when you look at this process and the question is is there any reason to doubt that this was a full, fair, arm's length process that was fully disclosed to everyone through the filing of the GSA and the accompanying documents, the answer is yes. That's what the evidence shows and there is literally nothing in this record that suggests anything otherwise.

So the last question is is this a fair and reasonable transaction from Magnetation, LLC given these circumstances.

THE COURT: Let me ask you this, what is -- because I am a little confused on the number.

MS. STARR: Sure.

THE COURT: Now, with the change that we have heard about today, how much is

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AK Steel ultimately putting into this or waiving as part of their purchase of this first secured interest? What will they ultimately be putting in? What's the number?

MS. STARR: Again, this is a little bit --

THE COURT: I know --

MS. STARR: It's estimates.

THE COURT: What's the range?

MS. STARR: I believe that the range has now gone from the mid 20s to 30 to more closer to 30 to maybe even into the low 30s.

THE COURT: I know it's a moving target, but I just wanted to get that.

MS. STARR: Yes, because the change that we're talking about that will be integrated into the GSA is that AK will walk away from the $6 million that they were originally going to recover, so that will increase the value to the debtors' estate so it can then be distributed to the creditors.

Just to go back, so the question is is this in the best -- bottom line, is this in the best interest of the debtor. There the

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answer is clear. There is no other choice. There is no white knight who is going to save Magnetation and I promise you we have looked. And the testimony -- you don't need to take my promises. The testimony is clear.

We have looked and we have negotiated as late as this weekend trying to find something and there simply is no other alternative.

The only other choice which is just keep operating until we run out of cash is no choice at all. That will leave Magnetation in a considerably --

THE COURT: With Mag, Inc., the settlement with Mag, Inc., with the releases and one of the agreements, I think, it was the intellectual property agreement, I forget the term for it, that agreement has already -- I think that that one has already been assumed, correct?

MS. STARR: Yes, you're right, the TLA.

THE COURT: That one has already been assumed and is -- that means it can be subject to the normal rules, could be assigned as well, is that incorrect, to an

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ultimate purchaser, whether it be the Ad Hoc Committee group or someone else?

MS. STARR: Well, Your Honor, we have a license we could attempt to -- but we don't control that license. That license is not controlled by Mag, LLC, but by Mag, Inc.

Certainly Mag, Inc. could negotiate to provide that testimony to another purchaser if one came along.

If Your Honor is okay --

THE COURT: If you close down ultimately, if you closed operations, nothing works out, what value is that technology license agreement then?

MS. STARR: Well, the technology -- Mag, LLC will sees to use the technology license and because they will no longer be honoring the terms of the license because they are shutdown, that will revert back to Mag, Inc., you know. What they will do with it, I don't know.

THE COURT: All right.

MS. STARR: Just to go back to the liquidity situation, the testimony, again, is un-rebutted. The company is in a

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dire situation. They are going to run out of liquidity and they are going to have to close the doors and that's not going to happen in months and months. That's going to happen in weeks and no one is denying that.

Now, Mr. Ratelle tried to suggest, well, maybe you shouldn't do those capital improvements and maybe you can push things out a little ways. That's no answer.

The problem is they don't have the money to make the basic capital improvements that are necessary for this business to operate. These capital improvements, if not made, put the company at risk of an operational failure and thus -- with an operational failure an inability to comply with the contract and put the company in a position where they will be in breach and have a termination of the PPA and, again, a termination or I should say a breach of the PPA which then leads to a termination by AK because the company is no longer able to perform, is a disastrous result and one that we are at great risk of happening without the GSA.

THE COURT: The GSA has several

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different provisions. This could have been brought in several different motions, obviously, that would have been one option. I know that a lot of it is intertwined. I get that.

But, for example, if on the -- it appears to me this is an all or nothing proposition that you presented to me. If I were to, just giving an example, I were to agree to parts of things, but one part I did not, let's say the employees, does that tank the whole deal?

MS. STARR: Well, I think, Your Honor, if we focus for a moment on the employees, and Ms. McGreal will speak to that --

THE COURT: That was just an example.

MS. STARR: -- fulsomely. The employees right now under the current structure of the GSA -- we need to be able operate after the effective date and we will need those employees to operate.

If this transaction happens, it may be that ultimately you won't need those employees for six months. You will need some

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them for some much shorter period, but those employees are a necessary element to function and, indeed, the items that have been bundled together because they are necessary to work together in order to achieve a value maximizing --

THE COURT: I guess my question is this, and using that as an example, let's say I were, just as a hypothetical, I was to rule that your burden has not been met regarding the employees under 503(c) and if I were to rule that and let's say I rule everything else was okay, where does that leave your deal with AK, the ad hoc, because they are part of this deal sort of, and JP Morgan and everyone else? Where does that leave things?

MS. STARR: Well, I mean, you can approve -- I think the answer is you can approve the GSA and not approve the retention plan and it's not that the GSA would terminate or would be -- you -- it's not that you would be unable to approve them separately. I think it would be -- it would put the debtor at real risk that we would

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have a GSA --

THE COURT: I understand.

MS. STARR: -- but then no employees to operate after the effective date.

THE COURT: I understand. Ms. McGreal can address that.

MS. STARR: Yes. A legal matter, yes, that could be done.

THE COURT: Well, I knew it could be done as a legal matter. What I meant was -- that I get. What I really want to know what's the practical affect.

MS. STARR: As a contractual matter it can be done is perhaps a better way to put it.

THE COURT: In other words, what I am getting at, does AK have an out? In other words, if that portion of it is not allowed, does JP Morgan have an out if that portion of it -- for example, I know there are other parts. Obviously AK has an out if I don't approve the part with AK, but do they have an out, for example, on that point?

MS. STARR: No, I don't believe

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they do.

THE COURT: And they don't have an out on -- we talked already and I -- one thing you might want to address is the wind down procedures. I have some -- Caterpillar raised some issues and I know you resolved them for them, but there are other people out there who may not even be paying as careful attention to this case or want to spend the money on attorney's fees, so my concern is that especially counter parties to agreements you want to assume, I believe they have to have sufficient notice, possibly to get counsel, if they are not in state, there maybe some not in this state, have a chance to review everything and cure amounts would usually be the big issues.

Time may run out under the way you have it, so I have some real concerns on due process grounds.

Now, parties agree that their contract can be assumed. I get that. Still, the committee or the other parties in this -- they still might want to see what's being assumed here, but I have less a concern on

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rejection which you can do very easily. You don't have to worry about my approval at least initially.

What are your thoughts on that? I know in other jurisdictions stuff like that is done frequently, but I do have a concern about small businesses, exactly those contracts under $500,000.00, that Caterpillar, you know, raised in their objection.

MS. STARR: Ms. McGreal will address this in more detail, but I think what I can say is, Your Honor, we're certainly very open to modifying notice procedures as necessary. This is not intended to deprive anybody of due process.

THE COURT: Oh, I didn't think it was, but I -- I didn't think you were trying to pull a fast one on people that weren't paying attention or anything like that, but I think sometimes that's what happens and that's what I worry about.

I think there's still ways you can get things done quickly. If there's one that you have to get down fast, then we have to do it expedited, then you got to do it expedited.

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Okay. I hear you on that.

Do you want -- you got about 12 minutes left. Do you want Ms. McGreal address her points?

MS. STARR: She will. I am going to say one last thing, Your Honor.

THE COURT: All right.

MS. STARR: If you don't approve the GSA, this company is going to fail and you have to understand there are a lot of people in this courtroom hearing what was said today and a lot people on the phone and a whole lot of other people besides that are going to get this report.

If this GSA is not approved, our vendors, our creditors, our utilities, everyone has heard it, and they have heard -- heard us admit that we have a liquidity crisis and we won't be able to pay our bills.

And so the truth is if the GSA isn't approved, this company is going to fail and this company is probably not going to make it to October 21. Its creditors and vendors may make sure it fails a lot faster than that.

THE COURT: All right.

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Ms. McGreal? Thank you. I am going to start with some questions on this. I am going to start with the liens and I do want to get to the -- to the employees as well.

On the liens, first of all, the law of the case, of course, would be a decision that's already been made in this case. The cash collateral agreement that Judge Kishel entered, one of them way back, there are 900 and something entries here, so I couldn't tell you the number, hardly anyone disputes that JP Morgan or maybe someone will, that JP Morgan had a first secured interest in receivables. It doesn't say receivables only not from plant four or parts of that.

Do I need to look any further than that to get into some of this, but that's one part of the question.

The second part of the question is they have raised an issue. Don't you have to adequately protect them? Nonetheless, go ahead.

MS. MCGREAL: Your Honor, Michelle McGreal, David Polk & Wardwell on behalf of the debtors.

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Your Honor, is exactly right. I don't think you have to look any further than our DIP order. I think you heard a lot of testimony today and we put that on because if, in fact, there was any reason to look past the DIP order, we feel very confident that there are no liens in the minerals under plant four, but Your Honor --

THE COURT: (Unintelligible) figure those out maps out, and I say that -- and I say that because each side has presented different views of those. I can't -- I won't be able to make a decision on that. That normally would be an adversary proceeding of some type and they would have the opportunity to bring in experts who can read those maps and tell -- both sides could and tell me exactly where that lien is and then apply them to the facts and so forth.

But the testimony I had today, as good as it was, from all the people here, none of them were experts on -- on reading those kinds of maps or exactly pinpointing where everything was. I don't think anyone had the expertise in that. I don't see how I can

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rule on that.
What about -- how are they adequately protected? What if it turns out they do have some kind of lien that follows through to their -- to their -- becomes a receivable in some manner and they have an interest in receivables? How are they protected? Do they have a claim against the secured parties of some kind of conversion thing? How are they protected here?
MS. MCGREAL: Well, Your Honor --
THE COURT: Because the money is being paid. I mean, it's not like we -- normally we would say the -- you know, the order would say that the -- you know, the liens attached to the same (Unintelligible) to the proceeds, but here the proceeds, of course, are not going to be just hanging around waiting for lawsuits, as I understand how this deal works.
MS. MCGREAL: That's right, Your Honor. Again, we do think the DIP order controls here. Mr. Ratelle is no stranger to this case. I'm really quite clear there's a 60 day challenge period in the DIP order.

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Mr. Ratelle sought diligence from the debtors. We provided materials relevant to the security interest that JP Morgan has and the bond holders have, gave them extra time to review that diligence. They determined in writing that they have decided they did not want to challenge these liens.
There has been no motion here for adequate protection. We haven't been told they are not adequately protected. We were surprised to actually see the assertion that they had or thought they had a lien on inventory and receivables. That's just something --
THE COURT: Again, I am new to this case or at least four months new to it and did they -- so you can tell me and Mr. Ratelle can tell me, too. Of course he can't speak for everyone, but to your knowledge did anyone ever -- these receivables have been going on the whole case.
Has anyone ever objected at any point in time until now to these receivables being -- having a lien attached to these receivables?
MS. MCGREAL: No, Your Honor, no

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one has objected and no one has, again, ever asserted that they had a lien on inventory and receivables.
THE COURT: And the only people that were protected by the cash collateral order with replacement liens or the like were those who asserted and which I am assuming is some combination of the Ad Hoc Committee and the JP Morgan interest. If there's anyone else you can tell me. I didn't read the order carefully.
MS. MCGREAL: No, you're right, Your Honor, and actually it's important to point out that at the DIP order stage, again, Mr. Ratelle's clients as well as other statutory lien claimants actually raised issue with the DIP priming them. They said this new debt is going to come in and prime us and we are not okay with that.
We said you're right, you were here before, this is a new DIP coming in 2015. It sounds like some of you did work in 2014. We have got the 2013 stuff. That's JPM, that's the bond holders and you have done work in 2014 and you purport to have liens on stuff.

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Now, 2015 we're putting in a new DIP. We said we're not trying to prime you. We carved you out of the DIP order and said the DIP actually doesn't prime you, so we're only talking about stuff from 2013 and they were happy with that. They withdrew their objection to the DIP and we had a consensual DIP order that got approved with that language in there.
Again, Your Honor, we view the two pieces of property that are actually being transferred on hopefully Friday as personal property subject to all asset UCC liens that no one has ever challenged as being recorded, perfected, filed and valid both with respect to JPM and the indentured trustee under the bonds.
THE COURT: Okay. Let me make sure I understand and JP Morgan will have a chance to talk as well if they want to add in on this, but the DIP order, and I will look at it, but the DIP order itself covers the post petition, a security interest in post petition receivables to one of the two parties, the DIP lender with some combination

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of the Ad Hoc Committee, I suppose, but the liens on the -- the liens on receivables under the DIP orders are to JP Morgan and the Ad Hoc Committee and no one else.

MS. MCGREAL: The pre-petition liens are for JP Morgan and the bond holders and no one else.

The DIP lenders will also got super priority priming liens on all assets junior to JPM, but they primed the bond holders.

THE COURT: Right.

MS. MCGREAL: And that is when mechanic's liens came in. We didn't parse out what property anyone has a lien on. We just said the new DIP liens that are going to blanket all of the debtor's assets are not going to blanket any valid liens that you, the mechanic's liens, may have, so at that point we didn't make a determination over whether they, in fact, even have liens over inventory and receivables.

We don't think they do, but if they did we made sure that the new 2015 liens were not --

THE COURT: That's what I don't understand. I'm sorry for being slow in

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this.

If that's right, if they are carved out, then that issue hasn't been resolved in the order, has it? If you carve them out and say this doesn't affect you, doesn't that mean they have a potential to make this argument? You will get your chance. Doesn't that make a --

MS. MCGREAL: It only says that they are not junior to the DIP lenders. JPM is recovering collateral on the effective date. They are getting the inventory and receivables value as a result of their -- under their pre-petition role and that they are senior to everyone and we certainly didn't carve out --

THE COURT: And they have replacement liens that cover -- obviously that cover the post petition, that's what I am getting at.

MS. MCGREAL: That's right, Your Honor.

THE COURT: Of course they would get that, but I just wanted to -- all right. Okay.

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MS. MCGREAL: So Your Honor, we do think --

THE COURT: Let me ask you about the employees because we're not going to -- you're running out of time.

MS. MCGREAL: That's fine.

THE COURT: I didn't get the names of the employees. I didn't what they do. I didn't get anything. I don't know how they meet the standards under 503(c)(1) or (2) for the insiders, whichever one you're relying on and even 501(c)(3) has standards that have to be met for non-insiders and I got very little information as to, you know, where this is.

The burden of proof is on you, is it not?

MS. MCGREAL: It is, Your Honor, and we believe we have met it. We think that 503(c)(3) is what controls here. 503(c)(1) which deals just with retention plans with respect to insiders, the three insiders who are not in the retention plan at all. The three insiders are in -- only in the incentive plan and so really the standard is --

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THE COURT: Do I have copies of those agreements?

MS. MCGREAL: There's not an agreement, Your Honor. It's essentially sort of an employee program that the debtors have developed.

THE COURT: Was that -- I didn't get that today in evidence. Is it --

MS. MCGREAL: You did not, Your Honor. We submitted a chart with our reply brief that provided the parameters. We did not include any specific employee names. I think we're happening happy to provide that under seal. We just did not want that to be part of the public record.

THE COURT: That's all right. I guess I am saying is that I mentioned in the beginning I needed stuff on the -- Ms. Wencil has raised objections for her -- that's got to be on the record and she's got to have a chance to cross examine or witnesses based on that agreement. Nothing ever got submitted on your chart today, so I am still wondering if you met your burden of proof.

You know, if you can't say the names

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because somehow it's confidential, that would mean every other employee could figure out who's going or whatever it is, we could have dealt with that, but I have concerns about it and the standard -- Congress has spoken on this and you got to meet a fairly high standard, I think. I don't know if it's been met here.

MS. MCGREAL: Your Honor, we do think just the business standard judgment applies here because we think that with respect to Federal 3C1 the insiders are not included in any retention plan. The incentive plan is primarily incentivizing. We have the three targets which is maximizing the effective date payment.

We have now heard a lot today about how much we pay on the first day. It very much matters --

THE COURT: I have got a couple of minutes. What happens if -- we heard a little bit about a deal that may be -- may or may not be coming in next week. I don't know.

If Mr. Fleck's deal is presented to me

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sometime next week which would, as I understand it, because we don't know what that deal is, but at least it's been said that that may end up being a sale of all the remaining assets of this company, does that -- what about these plans, incentive or otherwise? What happens with these plans? Are they then -- do they all get their money depending how much is credit bid or are they inoperative at that time or the buyer can do whatever they want with people?

MS. MCGREAL: I actually think they will be quite operative, Your Honor, and the way that I think it will work is that the retention plan provides that you get a payment in a lump sum if you are employed by the debtors for a certain period of time.

If the sale happens next week, which we all hope it will, most -- I should say all of those retention payments will not be honored because presumably almost all of the employees will be let go before the 60 --

THE COURT: So my question, some of the concerns I have, my question is why not continue this -- tell the employees it's

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not going to happen, it may happen. Why not continue it, give you more of a chance to present -- Ms. Wencil can address what she thinks of this, give you more of a chance to bolster up the record on this.

If it doesn't happen next week, you can continue it to whatever date you want and we could hear that part of this thing at a later time. That would give you more of a chance to present, get into evidence some of these things, and give Ms. Wencil a better chance to cross examine on and the like.

Why wouldn't that work because, after all, if what might happen next week actually happens next week, and I am not saying it will, I haven't seen anything from this. I am not going to say I am going to approve anything today or Thursday.

Assuming I approve Thursday and then that does get filed and it's heard next Thursday or next Friday or whenever it's heard and then that's approved, the retention plan is not an issue, and then if it doesn't get approved, it is an important issue from your perspective, make your case, and to get it

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done? What about that?

MS. MCGREAL: Your Honor, I think it is actually very important today. As you can imagine, these employees have received WARN act notices and they know that the company is effectively shutting down. We need certain of them to stay on.

THE COURT: So that's retention and not incentive?

MS. MCGREAL: Correct, but I think it applies to both and I can get there very quickly.

I think that it actually applies in both cases. If the sale happens next week, we're actually going to need people to literally be working 24 hours a day all the way until whenever our hearing is next week to document an APA, catalogue all of the assets.

THE COURT: All right. But they are not going to -- you just told me that they are not going to get -- the plan won't apply to them anyway.

Isn't that their job to do, pay overtime or whatever, maybe I shouldn't have said that, but whatever you got to do, right, but

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with -- why do you need a plan in place for them to work the next week?

I haven't heard any evidence that people are just going to start jumping ship next week if this thing isn't approved. No one testified to that today. I understand you are worried about it, but I didn't hear -- none of the witnesses testified to that.

MS. MCGREAL: And we're certainly happy to put in that evidence whenever Your Honor would like. I think our papers are clear on that point and I would point out that --

THE COURT: Again, your papers are one thing. As I mentioned at the very beginning of today, I had to get evidence on the record today. That was the purpose of this today, so I understand the paper. Lots of things were said in the papers, but I make this decision based on what's on the record and the law of the case as well.

MS. MCGREAL: I think, Your Honor, the one thing to point out is that the only creditor or actually I shouldn't say creditor, the only objecting party at this

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point is the U.S. Trustee. Our creditors have not objected to this and I think, quite frankly, some of them are supportive in incentivizing and retaining our employees.

Ms. Wencil actually objected on two very narrow grounds and that was, one, whether the incentive plan was incentivizing enough, whether the targets were too low and I think that Mr. Talarico actually put quite a bit of evidence on the targets that we have set forth and then also about whether the CFO, CAO and COO should properly be in here, so I think on those points we have met our burden.

THE COURT: Thank you. Your time is up. She's ready. I am going to let Ms. Wencil go next just because we were just talking about this. I will skip the order that I originally had because -- while it's fresh in her mind.

MS. WENCIL: Thank you, Your Honor.

Yes, the U.S. Trustee's position is that the debtor has not met their burden under Section 505 today and I believe Your Honor has pointed that --

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THE COURT: Did I say 503? Okay. Go ahead.

MS. WENCIL: Your Honor has pointed out they did not submit even what the retention agreement is or the incentive agreement and who it involves and how it's structured amongst all of the employees, so I don't know how the court can find that it's a reasonable agreement to that with respect when you don't know even what the three insiders are being paid.

I would also note that the -- there was testimony today that the APA, if that's approved, that's going to change some of the terms under this agreement, so we don't know if the terms will even survive or what the court will be authorizing.

Also as to the record, I point out that they have the three tiers of the incentive. They didn't submit what the wind up budget is going to be. Once again, that budget could be altered due to the APA again, but I don't think your court can find -- Your Honor can find that those incentive payments are reasonable when Your Honor doesn't even know

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what the budget is and whether it's something that's going to go be easy or difficult to make.

Going to back to the individual metrics, the U.S. Trustee does not think Your Honor can find that they are reasonable. The effective date payment -- the testimony was here today that the effective date payment is already estimated to be about $57 million.

The testimony was also that the production has been very good and Your Honor hasn't approved the agreement yet, so as Your Honor noted, the employees are all being paid a salary and they seem to be doing their job very well under their salary.

Under the remaining proceed asset sales, that's $25 million for asset sales, assets that are valued at about $716 million at book value.

We haven't heard any testimony about, you know, why that would be a difficult number to reach in this instant and also it's worth pointing out that this is a liquidation mode. The assets are going to be sold either by auction or are they are going to be sold via

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the APA.
The debtors hired consultants, other professionals of the CRO, they are the ones overseeing this liquidation process and they haven't demonstrated that these insiders are playing a different role than what their job already is.
In the reply I think they mention that they need to manage what's going on at the plant, pay the bills, keep the employees moving towards goals, but that's also the jobs, I think, of those positions as well.
THE COURT: What are your thoughts on -- a lot happened here today. There's now a new question mark on what's going to happen next week where they concede that should the -- one of these options occur, you know, it has a lot of contingencies to it, I got to approve this.
One of these options would negate the need for one of these agreements. What is your thought on seeing what happens then and then perhaps revisiting this issue when they know exactly what's happening or have a better idea of what's happening and can maybe

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address -- give them a chance to address some of these concerns in a more -- giving them more time. Giving you time to look over things. Maybe you will think it's fine after you see it. Who knows.
What are your thoughts on that?
MS. WENCIL: Well, I guess the debtor had the burden today, Your Honor. I don't see why the debtor would get a second bite of the apple, so to speak, because that's the agreement that's before Your Honor today.
THE COURT: Well, they said I could -- they don't have any problem with me carving some of it out and, you know, in essence continuing part of it. They don't seem to have a problem with that and you're right, the burden today -- but that wouldn't prevent them from situation changes from coming back with a different incentive plan at some time, correct? It wouldn't be -- if th facts it wouldn't determined issue, right?
Why couldn't they come back later on once they know exactly what's happened?
MS. WENCIL: If they are bringing

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a different incentive plan under the APA, I mean, I suppose we would have to look at that at that time.
THE COURT: Or a different incentive plan once they know exactly what's going on a week or so from now.
MS. WENCIL: But I do believe we have the testimony today, so then you're stretching out the testimony and losing the record.
I think it becomes kind of patchy if you keep, I guess, trying it, but I just -- based on the issues and the evidence that was presented today, I don't think the debtors have met their burden under the 505 and that the court shouldn't approve that aspect of the motion.
THE COURT: Okay. Thank you for your comments.
Let me -- I will let Mr. Ratelle go next and I know there's some others who are anxious, but you will all get your turn and it's -- let me make note of the time here. Okay.
Go ahead, Mr. Ratelle.

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MR. RATELLE: Your Honor, our objections, I think, are basically two separate categories. Let me start with kind of the elephant in the room first which has to do with our assertion that we have a priority lien on the receivables.
What Ms. McGreal indicated with regard to the carve out is true. We have a carve out in the DIP order and that was specifically negotiated and is -- it is a carve out relative to the lien that was granted to the debtor in possession lenders.
With regard to JP Morgan, however, the issues is a little more complicated and the issue comes down to this: They asserted a priority lien and collateral identified in their loan documents, in their mortgages that they obtained, and we reviewed those documents and could find that there was no interest of any sort whatsoever filed by JP Morgan in any of the real estate associated with plant four.
THE COURT: Let me interrupt you. They were replacement lien, I assume, though that covers receivables.

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Was there an exception made in that receivable replacement lien that's apparently first priority? The replacement lien, was there any exception made for stuff coming out of plant four that relates to you?

Again, I am not familiar with the order in particular.

MR. RATELLE: Your Honor, yes they have a replacement lien in receivables. There's no question about that.

Our issue is a little bit different. Whether they have a replacement lien in receivables, the question is whether or not receivables that -- that derive from the extraction of minerals from real estate that we have a priority interest in, whether that replacement lien takes priority over the lien that we can trace and follow and continue --

THE COURT: Let me interrupt you again. Those are receivables, nonetheless. They are receivables. Did their replacement lien, so to ask the question, did their replacement lien that they received in cash collateral, whatever it was, that their replacement lien except out your kind of

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stuff or was it just simply a replacement lien, regardless of what their original aim was, they got a replacement lien that may cover all receivables and may be broader than their initial mortgage or lien, whatever it was. How do you get around that?

MR. RATELLE: Well, Your Honor, I get around it this way which is that they don't have any lien in the mining materials, in the -- in the minerals that are extracted from the property. They don't have a lien that takes priority over the lien claims, the miner mechanic lien claimants. They are the ones that have the --

THE COURT: Once your -- once your collateral -- once you claim as your collateral turns into a receivable, isn't that the end of it? I understand what you're saying and I don't know if you have an argument on the other stuff that, you know -- but once it's -- two things being sold, there are receivables and some of the inventory, so I mean the word receivable is a broad definition and wouldn't that cover your -- things that you could ultimately trace all

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the way back to possibly your lien? Again, that's very speculative because I didn't -- I can not rule on that based on what I heard today.

MR. RATELLE: Right.

No, Your Honor, I think the issue in part is what is the -- what is the legal effect of a party having a priority security interest in a substance that's in real property and when that's sold, when that substance is sold, they have a replacement lien in their collateral. Their collateral base doesn't include the minerals that are in the ground.

THE COURT: Is that what the order says, that it's only limited to their collateral? That's not what most of those orders say. They certainly don't say that. They usually say you got a replacement lien in all receivables.

MR. RATELLE: If I may?

THE COURT: Yes.

MR. RATELLE: As of the petition date, says the order, the liens and security interest granted to the pre-petition term agent to secure the pre-petition term debt --

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THE COURT: Tell everybody where you are. First of all, what docket number is this?

MR. RATELLE: This is the -- this is the final DIP order. This is Document No. 169. I am reading out of Page 9, Romanette 2, on of that page.

Our valid, binding, perfected, enforceable first priority liens on a security interest in the real and personal property described in the pre-petition term credit agreement and related documents.

MR. QUSBA: I'm sorry, Your Honor, I hate to object. I apologize.

THE COURT: There's no objection for an argument. You will get your chance.

MR. QUSBA: I just don't -- I'm not even following where we are and I am not sure counsel is reading from the right section.

THE COURT: Again, what document?

MR. RATELLE: This is the final DIP order. This is Page 9. This is Romanette -- Paragraph Romanette 2 and I am reading correctly from the document.

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My point, Your Honor, is that they identified their collateral as that which is described in their underlying documents.

Their underlying documents do not include as a lien interest any of the properties associated with plant four, none of it.

When they are getting replacement liens, they are not getting replacement liens and collateral that they don't already have an interest in.

My point, Your Honor, is that they never had an interest in the minerals and consequently when those minerals are extracted our lien continues to attach to those minerals going forward and from our perspective the use -- the use of the cash from the extraction minerals in which we have a lien by virtue of our mining lien -- by virtue of having done all the work that opened up these mines in plant four, as long as that money was being used to maintain the operation of the business with the prospect of reorganization, we were adequately protected through that process.

It's something different and materially

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different is happening now which is that AK Steel wants to, in effect, buy those receivables, not really from the debtor, but from JP Morgan and our position is no, when you -- when you put up a stop sign in front of those receivables and they are not being used to maintain the operation of the debtor, but rather want to transfer those receivables as such to another party, you got to deal with our lien and our contention is that we have a priority lien.

THE COURT: JP Morgan had foreclosed and gotten foreclosed and collected their receivables, you would be making the very same argument?

MR. RATELLE: Correct, Your Honor. Yes, to the extent that those receivables continue -- are the result of the minerals extracted from plant four, which they are, and that we have a mining lien on and that our lien attaches to those minerals.

Our contention is that that lien continues into the receivables and that the collateral that JP Morgan had an interest in -- the DIP order didn't give them new -- new collateral.

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They didn't say, you know, you don't have a lien on the minerals underlying plant four and now you have a lien in that as additional adequate protection.

THE COURT: Well, again, did it give them a lien in post-petition receivables?

MR. RATELLE: Yes, I believe it did. Yes.

THE COURT: Did it distinguish between stuff coming out of the -- that could be subject to your's or any other type of receivable?

MR. RATELLE: It was unaddressed in the order. That particular issue was unaddressed. In other words --

THE COURT: Did you ever assert any lien? Did you ever assert cash collateral lien? Did you ever object and ask for adequate protection for the use of what you now maintain as your cash collateral?

MR. RATELLE: We did not because it was our view that the use of the cash for the ongoing operation of the debtor was adequately protecting us, but what's

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different today is that's not how this money is going to be used.

These receivables are being used to monetize and liquidate a portion of JP Morgan's debt.

THE COURT: Did Judge Kishel address the issue you just mentioned in his order? You're saying you only thought you were adequately protected. I am not totally sure I understand what you're saying, but in any event --

MR. RATELLE: No, no, no. I don't mean to be obtuse about this, Your Honor. What I am suggesting is simply the following, which is that for the mechanic lien claimants, the idea of having this debtor reorganized, put together a plan that would involve ultimately taking care of the millions of dollar of lien claims that are not only on this plant but on some of the others was of greater interest to us at the end of the day.

Now, there are some mechanic lien claimants --

THE COURT: Let me ask you this,

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let me interrupt you again, let me ask you this: Don't you -- if you believe that the cash collateral order did not cover your's and you're first on receivables that have the -- go back to the roots you're talking about, I mean can't you -- can't you bring -- aren't you able to bring an adversary proceeding at some point?

MR. RATELLE: Yes, we are.

THE COURT: So aren't you protected by that? Unless I hear some -- you got potentially AK Steel and JP Morgan, whoever -- I don't know how else this waterfall changes, I can't keep track of it, but you got all these waterfall people you can bring an adversary proceeding against.

MR. RATELLE: No, we can't, Your Honor. The reason is that the order provides that AK Steel gets these receivables free and clear of any lien claims and encumbrances and that everything is washed clean of the claim that we're asserting.

THE COURT: Well, what about -- what if your adequate protection or whatever your interest is is that you have such a

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right?

MR. RATELLE: That the order provides that the transfer of the receivables is not free and clear of our lien.

THE COURT: I am not saying that. What I am saying is that your adequate protection right would be if you claim you're first -- normally we would have -- we would say that the proceeds are -- the same (Unintelligible) priority affect and then there are would be some fight over the proceeds.

MR. RATELLE: Correct, correct.

THE COURT: Because they are collecting the proceeds, they don't want to hear this, but I'm saying one possibility, of course, is that you'd have to bring a case against them saying that this order -- I will let them, of course, address the order here eventually but, you know, that this order doesn't cover them in some manner. It doesn't cover your liens and is somehow excluded.

I am not saying -- I am not previewing how that would go, but I am just saying that

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would be -- that would be the possibility, wouldn't it?

MR. RATELLE: Well, Your Honor, clearly if the order is not intended to preclude the assertion of that argument, whether it's as to AK Steel or whether it's as to JP Morgan, then I presume that a carve out to that effect could be -- could be part of the order approving the Global Settlement Agreement and that right would be preserved.

My concern is that we are going to get into an argument over what the affect of the order is which would be a huge distraction to the fundamental point here which is that with our liens on the minerals that were extracted that created these receivables does our lien continue in those receivables, and if they do what the order didn't do is it certainly didn't cut off any of our rights in that regard, no more than payments than came out of personality -- rather realty, I'm sorry.

In other words, if AK Steel or rather Magnetation were to try to sell a piece of real property and would sell it to Mr. X, in one respect that would be a receivable,

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wouldn't it? It would be the obligation on the buyer to make payment on the property.

Nobody considers that an Article 9 receivable because it's completely associated with the real estate and that's the point that we're making here, that our rights in the reality, in the minerals by virtue --

THE COURT: Article 9 was revised and didn't it deal with that issue precisely?

MR. RATELLE: Your Honor, our contention is that -- is that Article 9 addresses that in this respect -- in this way -- let me just find it real quickly here.

What we're saying is that --

THE COURT: We don't need to get bogged down in Article 9. You have only got a few minutes left. I know you have a whole bunch of other arguments.

MR. RATELLE: I do. This is the part -- I think the court understands our position and that is that the DIP order was never intended to extend the pre-petition lien to anything other than the collateral in which -- in which the JP Morgan already had an interest in the --

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THE COURT: I understand what you're saying, yes.

MR. RATELLE: All right.

With regard to the -- with regard to the Global Settlement Agreement, Your Honor, our position very simply is that the debtors did not satisfy their burden of proof with regard to the sale component of their motion.

While characterized as a settlement agreement, it's without doubt that there are sale aspects to this, 363 sale aspects.

There's been no testimony of the value of anything that was purported to be sold other than this arrangement related to certain amount of the inventory and the receivables that AK Steel is picking up and I would submit to you that if the debtors were so comfortable with the legal position with regard to the receivables, I submit that they wouldn't have come up with this almost Byzantine approach toward transferring the receivables.

Understand what the process is that they are using. AK Steel pays a dollar amount to JP Morgan in exchange for obtaining a portion

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of the JP Morgan debt. By virtue of obtaining a portion of the JP Morgan debt, they then agree with the debtor where the debtor turns over the receivables from the delivery of the goods that the debtor has created and that the debt acquired by AK Steel goes down dollar for dollar through those receivables and presumably AK Steel is only willing to make the payment and submit to this dollar for dollar pay down upon receiving these receivables free and clear of liens.

I would submit that if we were able through an adversary proceeding to establish that that's not the case, that they can't take free and clear of our lien, AK Steel can't, then the dollar for dollar allocation to their deal is compromised at least to the extent of those dollars.

The larger point that I am trying to make, Your Honor, is that there's a lot going on in this Global Settlement Agreement that has very little to do with the settlement of claims and disputes as would typically be the case in a settlement of claims during the

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course of a bankruptcy proceeding.

This is intended to address a whole host of issues. The marketplace is open by the debtor and only certain people have the ticket of admission and the lien claimants never got that ticket.

And then the issue is, all right, if you are going to start distributing assets and paying people off through a waterfall that -- based upon who's willing to go along with this deal and oh, by the way, mechanic lien claimants, we don't even want to talk to you guys, you know, then they carve out the carcass of the debtor in whichever way they want, but there's a code in place that says, wait a minute, you have got to follow these priorities. You can't do it any which you want.

Here the debtors had a burden of proving why their sale procedures, their sale of assets incorporated into their Global Settlement Agreement was fair and reasonable. We submit that they have failed in that proof.

The suggestion, just to address a couple

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of issues raised, so the issue is we're facing a liquidity crisis. I think -- well, that isn't the case. There was never and there isn't today a liquidity crisis. If I can accelerate cap X expenses because I want to assume a certain rate of protection in 2017, then I guess that's a liquidity crisis.

But to the extent that this motion and everything associated with -- you know, make no mistake, all of the urgency that's been advanced by the debtor is really manufactured. There's very little credibility to any of that.

The notion of arm's length transaction, that itself seems to be not established by the debtors.

AK Steel and JP Morgan decided that they had enough of this case and they sat down and they cut their own deal off to the side and they told the debtor, we're done, go forward.

What realistic sale process could have been engaged in given that agreement in principle that was reached in June of 2016 when at least two of the interested parties were -- had as a -- as a significant issue

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the ability of restructuring or figuring out how AK Steel, which was the primary buyer of the products that were created by Magnetation, how would they come in and take over this company if that -- if that agreement goes away. They need the agreement in place.

So what's the dynamic that's created? AK Steel, JP Morgan have their deal. They are not going to change their position. Anyone who wants to come in and take over Magnetation and needs the cash flow that is created by those -- by that agreement, it's gone. It's history.

JP Morgan AK Steel are telling the debtor this is our deal, this is what we're going to do, and under what circumstances is AK Steel willing to even consider an approach -- an approach by a prospective buyer that suggests that there's something to preserve.

The other alternative, I suppose, is a buyer who's willing to take on the ongoing litigation risk of these claims. They buy the debtor as a going concern and say, fine, we will continue to fight the debtor's out.

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I will go ahead --

THE COURT: Is there any testimony there was such people out there?

MR. RATELLE: Well, there's -- there are two people that remain interested. One who wants to pick up the shards of this -- of the transaction after the Global Settlement Agreement has been improved. They have no interest. After looking at the AK Steel contract, they have no interest and had no interest in making a proposal.

THE COURT: Is there anything in the record to indicate there's somebody out there who wants to buy this company and take on AK Steel's appeal and all the other litigation that's going on?

MR. RATELLE: No, there's no testimony -- there's no testimony to that effect, but Your Honor --

THE COURT: And you think AK Steel and the debtor, we are almost done here, but do you think AK Steel and the debtor, the first 18 months of this case was a charade of some sort? They were -- it's in the record that they fought everything. Do

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you think this was all a charade to get to this point?

MR. RATELLE: Well, a couple of points in that regard.

First of all, AK Steel is an insider. There's just no doubt about that. They are still on the Board of Managers of the debtor. They owe fiduciary duty to the debtor.

When the deal that was cut between JP Morgan and AK Steel occurred --

THE COURT: Were sales prohibited to insiders?

MR. RATELLE: I think if there's a fair and robust sale process, which I don't think there was any testimony on here, of all the 20 plus people who expressed an interest in doing some due diligence on this --

THE COURT: I disagree with that, but insiders -- they aren't prohibited from making settlements with insiders or sales to insiders. There's nothing in the code that indicates that's not allowed.

MR. RATELLE: Well, the burden is still on the debtor --

THE COURT: That's true.

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MR. RATELLE: -- to prove fair and reasonable --

THE COURT: That's all true.

MR. RATELLE: Our position is that the way the sale process came about it's sort of like the last -- it's like the caboose on the train. It was the last thought, the last thing that pulled everything together, but unfortunately it brought in a lot of other interests, including those of mine clients and when an effort is made to try to tack on the sale process to this Global Settlement Agreement, now you're -- now you're mixing and matching. Now you're using the leverage of a settlement that benefits two main parties in this action, JP Morgan and AK Steel.

To the extent that JP Morgan thinks that they are over secured, which they may well be, you know, why is it -- why is it that they get to kind of take the first cut of when -- when this deal gets shutdown? Why isn't the debtor coming in and --

THE COURT: Because of everything that's happened in this case up to this

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point. They got the first secured interest in this. I mean they have -- you asked a question today. They have a lot of leverage here.

MR. RATELLE: Yes.

THE COURT: At some point in time they -- I don't know every detail of the cash collateral order or agreement, but at some point in time I'm assuming there are things in that agreement that allowed them to call defaults.

MR. RATELLE: If the issue was adequate protection for continued use of cash collateral, obviously that's an argument that could be raised, but I will just make this last observation, Your Honor.

THE COURT: All right.

MR. RATELLE: And that is when the deal was struck between AK Steel and JP Morgan, they called the shots on how this was going to play out and I don't believe that AK Steel had the right to do that given their insider position within the company and the significant economic benefit they get by getting out of a 17-plus year contract that

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involves hundreds of millions of dollars potentially.

The other issue -- and related to that is this: Anyone who would be looking at this as a real estate going concern prospect would need something in place with regard to this. It just stands to reason. I don't think you need somebody to stand up and say, oh, your only asset that generates cash is this contract. Do you want to buy us as a going concern knowing that that's going away. I just think common sense dictates that no one is going to do that.

THE COURT: Well, common sense aside, I had testimony to that effect today. Okay. I appreciate your comments. Thank you very much.

All right. I don't know care which order -- we have some people left here. Maybe I will let the John Morgan -- I think that won't take very long, so let me -- he wanted say something.

MR. BOYSEN: Thank you, Your Honor. Brian Boysen representing John J. Morgan Company. I appreciate the opportunity

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to be here today.

We took your direct -- your suggestion, anyway and tried to coordinator our efforts.

THE COURT: I appreciate that.

MR. BOYSEN: Sara Doerr is here from Moss & Barnett and they actually represent the plaintiff in the Itasca County lien case. We're working together in that matter as well and looking forward to a resolution and think there has been some progress made today. Thank you very much.

We support the statutory lien claimant objection in this matter.

THE COURT: Okay. All right. I know you're your anxious to get up here.

MR. QUSBA: Thank you, Your Honor. Sandy Qusba, Simpson Thacher & Bartlett, counsel for JP Morgan as the pre-petition revolving agent.

Geez, I don't know where to begin. There's a lot stuff thrown out here.

Let me address, I think, last point that was being made by Mr. Ratelle which was this was somehow -- this Global Settlement Agreement is somehow a concoction of JP

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Morgan and AK Steel and this is some glorious end that we were looking forward to.

THE COURT: Actually I would prefer you -- what I'd actually prefer you to address, since you're here and we have got limited time, I prefer you to address the lien issue.

MR. QUSBA: Happy to.

THE COURT: And I would also like you to address would this -- would this order preclude them, meritless or not, from your perspective, from bringing some kind of a lien priority case? I say meritless or not, I don't know if they think they have that right, would that be their adequate protection here to the extent they have any kind of lien interest? Obviously, if you believe it's completely precluded by orders that have already been entered in this court and actually brought the lawsuit and somebody moved for summary judgment or whatever, you have a chance to address that. Go ahead. Those are the two issues I would like to hear from you.

MR. QUSBA: Sure, Your Honor.

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Let me just address them, then.
I will start with the second. There is no third party release in this Global Settlement Agreement. There are releases by and among the parties who are actually party to the Global Settlement Agreement, so if they think they have a claim against us, anyone else, they can bring it.
THE COURT: All right. Let me stop you there. I don't understand and Mr. Ratelle and his -- and his colleagues in this matter can discuss it. I am not sure why that doesn't resolve this for you, but keep going.
MR. QUSBA: Now let's talk about the liens.
THE COURT: Okay.
MR. QUSBA: I am going to begin -- there are three sort of areas I want to cover. One is -- let's start with just the very basics. We're talking about receivables and inventory. Forget the maps, that's not for Thursday. That is not up for debate.
THE COURT: I was hoping somebody

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would tell me to forget those maps.
MR. QUSBA: Forget the maps.
The receivables and inventory are governed by the Global Settlement Agreement. Okay. That's what we got to focus on.
Now let's talk about dates. Let's just begin at the very top. JP Morgan and the pre-petition note holders represented by Mr. Fleck filed UCC-1 security interests and UCC-1 financing statements in 2013. That is when our financing was put into place. They were blanket liens and we will get into the DIP order and walk-thru the blanket liens.
We had a lien on all assets, substantially all assets. Of course, we have a lien on the PPA receivable. That is the lynch pin for Magnetation. No question about it. No one would finance this thing without a lien on the PPA receivable. Okay.
There liens, earliest that they rose, per their own papers, per their own oral agreement argument, was, I think, March of 2014, so we were one year -- basically a little less, a little shy of one year ahead of them as far as time of perfection. Okay.

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Now, let's look at the DIP order.
THE COURT: Are we talking about the same document that -- the same docket number?
MR. QUSBA: Exactly. Docket No. 169, Your Honor.
THE COURT: All right.
MR. QUSBA: There's three sections I'm going to -- I would like to point you to.
First, is Paragraph 4A as in Adam, two in the hole, my Page 7.
THE COURT: Say that again.
MR. QUSBA: Four-A as in Adam.
THE COURT: What page?
MR. QUSBA: My Page 7, two in the hole. It starts as of the petition date the liens and security interests.
THE COURT: I am still not there. I apologize. You're saying your Page 7. I am looking at Page 7 of the document. What page is at the bottom -- this is the order. It's Page 7 of the order I am looking at?
MR. QUSBA: Yes.
THE COURT: Okay. Where on the

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page are you?
MR. QUSBA: So Clause 2.
THE COURT: I am now there. Okay.
MR. QUSBA: Which begins as of the petition date --
THE COURT: I have got you.
MR. QUSBA: -- the liens and security interest, the pre-petition revolving facility liens, right, and if you go down one, two, three, four, five, six, seven lines down, Clause A, are valid, perfected, enforceable first priority liens on and security interests in substantially all of the personal and real property of the debtors constituting collateral. Okay.
There's no question at all we had a lien on inventory and receivables. Let's leave aside the real estate for this discussion. Okay.
MR. RATELLE: I hate to argue or interrupt Counsel. I just want to point that the part of that order that he didn't continue reading is under -- as defined in the pre-petition revolving agreement --

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THE COURT: Hold on. Mr. Ratelle, I am not going to take -- you got to let him finish. He didn't interrupt you and he was anxious to do it and so let him go forward.

MR. QUSBA: Your Honor, just to respond to that, our collateral -- absolutely if we want to go back and look through the revolving credit facility documentation covers receivables, inventory, accounts, general intangibles. It is a blanket lien. That's how this thing was financed, full stop.

I think the debtors also in their reply papers listed out the types of collateral that we have, accounts, general intangibles, inventory, receivables, et cetera, so here we have an acknowledgement, a stipulation, Your Honor, made by the debtors, right, 4-A-2, Paragraph 4-A-2, which clearly says we have valid, binding, perfected, enforceable first priority liens, and you can bet there was a challenge period. Ms. McGreal mentioned that as well. That challenge period expired in August of 2015.

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Mr. Ratelle was even given an extension. He did not object. He let the challenge period expire. Okay.

Next, Your Honor, let me take you to Paragraph 8.

THE COURT: On page?

MR. QUSBA: Nineteen. I apologize.

THE COURT: One second.

MR. QUSBA: Because you asked a very simple question, I thought. Do our adequate protection liens grant us rollover liens on all collateral, right, and I am going to answer that.

Paragraph 8, do you see the bolded term DIP liens, Your Honor?

THE COURT: I do.

MR. QUSBA: Okay. It goes on to say all of the property identified in Clauses A, B and C below, collectively the DIP collateral, okay, and so just keep that defined term in mind, DIP collateral.

Then if we flip over the page, at least my page, Clauses A, B and C are exactly what you would think, first lien on unencumbered

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property, liens priming certain pre-petition liens and the DIP financing absolutely did not prime Mr. Ratelle's liens, wherever they may be. They didn't prime, but that's not what we're talking about.

We're talking about the definition of collateral. Collateral is all the collaterals, collateral described in Clauses A, B and C. C is the key, liens junior to certain other liens, okay, so that is the universe of DIP collateral.

Now, Your Honor, let me take you to Paragraph 11A, as in Adam. Okay. It's adequate protection liens. Effective and perfected upon the date of entry of the interim order and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or other agreements in the amount of such diminution of senior replacement security interests in a lien upon all DIP collateral, everything, everything. Any asset that this company has we have an adequate protection lien on it, particularly receivables.

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As Magnetation collects on a receivable and uses that cash, we get obviously a replacement lien on the next receivable as it's created under the PPA and then collected, so on and so forth.

THE COURT: And there's no carve out for that is what you're saying?

MR. QUSBA: Carve out for -- there's absolutely no carve out.

In fact, let's just read it. Let's keep going. So we have an adequate protection lien, right, in lien upon all DIP collateral, right, subject and subordinate only -- only one to the DIP liens on the funding account, which has nothing to do with this, right, that's the -- the funding account is an account where the DIP lenders actually funded proceeds, their own financing proceeds, so we don't have a lien on that, fine, the carve out account, as you can imagine.

In the case of Clause 2, in the case of adequate protection liens granted to the pre-petition notes trustee to the DIP, so -- so okay. So Clause 2 says in the case of adequate protection liens granted to the

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pre-petition notes trustee, that's not us, so go to Clause 3. I apologize. One second. One second, Your Honor.

I'm just trying to find where it says we are subject and subordinate to only the carve out in the funding account. I will find it.

Use of cash collateral, adequate protection liens.

FEMALE SPEAKER: It's right where you put it.

MR. QUSBA: (Unintelligible). I apologize, Your Honor, it was where I was looking.

In that clause 1, subject and subordinate only in the case of adequate protection liens granted to the pre-petition resolving agent, right, the only things that we're subject to and subordinate to are the DIP liens and the funding account, that's where they funded their proceeds, their $63 million in new money, right, and the carve out. That's it. That's the only thing we're subject and subordinate too, full stop, period.

And our pre-petition liens were almost -- were perfected almost a year before any

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purported mechanic's or miner's lien, March of 2014 from their own papers.

The challenge period has expired. We have a lien on all DIP collateral as adequate protection. That should be the end of it.

But I will go on because I think if you look at the miner's lien statute or their argument -- I'm really having trouble understanding this myself now.

First, plant four where they allege the actual physical plant plus the real estate underneath where they allege they have their miner's lien is on a mine, but that could be a factual issue, right? The miner's -- the miner's lien statute says it attaches to the interests of an owner. This is Minnesota Statute 514.17, spot 17.

The miner's lien attaches to the interests of an owner or a lessee, as the case may be, in the mine and its appurtenances. The Supreme Court of Minnesota, Your Honor, in Cohen vs. Whitcomb, 1442 MN 20, it's an old case, 1919, says -- but unfortunately, there's not a lot of law on appurtenances. Appurtenances are defined to mean that which

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belongs to something else, something annexed to another thing more worthy. Annexed.

So even if you take this argument that they have a mechanic's or miner's lien that then just somehow they want to get on a magic carpet ride and go from the debtor's lease hold interest, right, and appurtenances, skip asset classes, take their magic carpet ride, skip asset classes, right, go from interest in real property and appurtenances to inventory and receivables. Not only that, they want to skip debtors. The receivables are not even the debtor that they assert a miner's lien against. It's unfathomable.

Think about this, Your Honor, a regular way financing, forget bankruptcy for a second, someone does a -- they want to do a receivables financing, right, they go to Magnetation. They do the UCC search. The statute has been approved. It's been made very simple. You know where to look. You know what records to search.

Now, you did a UCC search. You didn't find any UCCs, but now you have to do a miner's lien search on some other entity to

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figure out whether these receivables are clean. It's unfathomable. It just doesn't make sense. It's not a coherent argument.

THE COURT: I don't have it in front of me, but maybe you remember, didn't the UCC when it revised it 16 years ago, didn't they deal with receivables that ultimately come out of real estate, in any event?

MR. QUSBA: Well, they talked about it as extracted. As extracted -- as extracted collateral and that's there. That's absolutely true, but this has nothing to do with that. This is inventory and receivables.

THE COURT: All right.

MR. QUSBA: Your Honor, not to mention we also have 363. The burden of proof is there's to establish the extent, validity and priority of the liens. They have had a year and a half to say something about receivables and inventory.

THE COURT: Let me ask -- we're running out of time.

MR. QUSBA: Yes, Your Honor.

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THE COURT: Let me just reiterate one thing. Your review would be that they are not precluded from making this argument, vis-à-vis, you or whomever else under this order the way it's presently drafted?

MR. QUSBA: I am not sure what this argument is.

THE COURT: Well, whatever their argument is. In other words, if they claim they have somehow first -- I am not making it, but if they claim somehow they have a first priority lien that somehow primes you through all the things you have just talked about and that all of the proceeds that this sale have gone to you, whomever and whoever else, I can't remember under the waterfall anymore, that was a long time ago this morning. Same question I asked you when you initially started, you said there were no third party releases. They could bring an adversary proceeding. I know you would say -- you outlined why you believe they are going to lose. They could bring such an adversary proceeding and that's not precluded by this order the way it's presently drafted.

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MR. QUSBA: They could bring an adversary proceeding if they so choose for damage claims.

THE COURT: Right, that's what him getting at.

MR. QUSBA: For damage claims, but the liens are being transferred -- excuse me, the asset, the collateral -- the receivables and inventory are being transferred free and clear. We're not making them release us.

THE COURT: Right. The damage claim would be some type of conversion or something saying that they were first and you're second, whatever they are claiming?

MR. QUSBA: Right. That's right.

Your Honor, 363 -- 363(P)(2), the burden is on them to establish. They have not, not for a year and a half they haven't. They were never there for the DIP financing on the use of cash collateral. They have never been involved in budgets. They have never been involved in anything to do with the receivables until this objection showed up in inventory. Never.

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Under 363(F)(5) this debtor is free to go ahead and sell assets that are subject to our liens, first liens, subject to our consent, which we are obviously consenting, and free and clear of junior liens.

THE COURT: All right. Thank you very much for your comments.

MR. QUSBA: Thank you, Your Honor.

THE COURT: Mr. Fleck had some comments he wanted to raise.

MR. FLECK: Your Honor, for the record once again, Evan Fleck, excuse me, of Milbank Tweed on behalf of the Ad Hoc Group, DIP lenders and bond holders.

I will first say I did agree to seed a couple of minutes of my time to Mr. Qusba so he's used it, but I will take the reduction in my time.

Let me be -- first say, Your Honor, if there are specific questions, I am happy to address them. Otherwise I just had a couple of comments.

So our comments, Your Honor, principally, first of all, in support of the GSA. I say

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that sort of -- it's a little strange for me to be here in support of the GSA. We filed the -- at least the longest in terms of number of pages.

THE COURT: Because you were against it at 8:30 this morning.

MR. FLECK: Right. But I want to clear, Your Honor, because I am hoping that we are going to be, in fact, the most persuasive one to be in support of it because we are actually in the best position to know what actually took place here.

We read the discovery, the depositions, the document requests. We have been intimately involved in every aspect of these cases, and so Mr. Ratelle's comments, which may have been suggesting that the spoils of this estate -- the carcass were doled out in order to get our support are plainly not true and there's no evidence to support that.

But the reason why we're reluctantly supportive, Your Honor, is because there's not a better option, plain and simple. There's not a better option. There are no other buyers. If there were, we would be

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working with those parties. We have worked quite hard around the clock with the debtors to try to find that party.
In order to have a recovery in these cases, we needed to have found that party. Of course, as I said very early this morning, we're hopeful that there's a follow along transaction. The parties have agreed to support moving forward with that transaction if there is one on very -- in short order, but there's no certainty around that.
I will just quickly, Your Honor, Mag, Inc. has agreed in connection with the license technology, because you had asked about that, if there is a follow along transaction to transfer all of that to a purchaser.
THE COURT: But that's not for today.
MR. FLECK: It's not for today, but did you have a question so I wanted to address it.
Your Honor, we're supportive for that reason. It's the best outcome, frankly.
As Your Honor noted, there are hard cases and easy cases. This is certainly not in the

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category of easy case.
We have insiders, that's true, but they can do a transaction as well. The burden is high. We have scrutinized the transaction.
It would be a lot easier for all of us if they were third parties. First of all, because the value would probably be greater coming into the estate and also we wouldn't have this specter, the taint, the suggestion or the presumption, as some believe, that something was done wrong here.
But at the end of the day, I think, Your Honor can take whether it's judicial notice, or otherwise, of our position here that given that we have decided to move on from our objection to try to find another way to preserve the estates, preserve jobs and find value, that should be indicative of something.
One last point, Your Honor, I agree with all the points Mr. Qusba made with respect to the liens. Some of them will be relevant as we move into what I hope will be the next phase. We do believe the issues as they pertain to the liens of the pre-petition bond

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holders are clear and set out in the cash collateral order. I am not looking to argue that. I know you won't let me. I won't try, but I only raise it now because some of the questioning of the witnesses and the arguments from the podium from Mr. Ratelle I think they are really directed towards that later hearing and I know we'll have an opportunity to litigate the issue if they chose to make the argument at the appropriate time.
THE COURT: All right. Thank you very much, Mr. Fleck.
Anybody else here who has not spoken and would like a chance to speak? All right. Ms. Starr?
MS. STARR: Your Honor, may the debtor make one very brief comment?
THE COURT: I will let you and Mr. Ratelle each make one very brief comment. Mr. Fleck said something about being at the end of the day and we are there.
MS. STARR: Your Honor, this transaction is the best and only alternative for the debtors and we stand here today with

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our senior secured lenders, with the DIP holders, with the unsecured lenders, all of whom agree with this. This is the only solution presented and Mr. Ratelle has objections. Those objections should not -- should not prevent the GSA which, just so we all remember, is the only transaction that's up here to be --
THE COURT: Do you agree -- do you agree with JP Morgan that they are not precluded from bringing some kind of lien priority claim based on, you know, they had -- whatever their argument is, that they have a first interest and this order does not prevent them from saying somebody converted their collateral that they are first somehow?
MS. STARR: Yes, I agree with JP Morgan, both that they have no claim on the PPA receivables, but that they are not precluded from pursuing some action later if they think they have got a basis.
THE COURT: I understand JP Morgan's -- I have heard all their defenses and if such a case were brought or at least some of them, but you don't disagree with

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that?
MS. STARR: That's correct, Your Honor.
THE COURT: All right. Thank you for that final comment.
Mr. Ratelle, you have got about a minute or two here.
MR. RATELLE: Your Honor, very briefly with regard to the order, I appreciate that people are asserting that our right to bring claims against third parties are not resolved under the order.
I would submit that they are and the sale of assets free and clear precludes us --
THE COURT: Wait a minute now. If the party that you ultimately bring that claim against are saying it's not precluded and the debtor is saying it's not precluded, maybe you can get some kind of language put in there to make it clear that that's not precluded.
They have agreed to it on the record here today that that's not -- it's a little peculiar for you to argue that the order does preclude you from doing that.

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MR. RATELLE: Right, and it does for a very simple reason. You have got to follow the structure that they have put in place, which as I have suggested, it's complicated for a reason.
JP Morgan isn't doing anything with the receivables. It's being paid down on the debt and it isn't insisting that those receivables that are subject to its security interest that it needs to continue to have any interest in those receivables effectively and therefore are consenting to the debtor's turnover of those receivables to AK Steel in their words as a kind of foreclosure action and so what would be our claim against JP Morgan? There being a portion of their debt is being paid, Your Honor.
What would be our claim be against AK Steel? They are getting the receivables free and clear of assets or rather free and clear of liens, claims, and encumbrances. There would be no claim, Your Honor.
THE COURT: All right. Thank you for that.
Do you want to say one more thing or are

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you all set?
MR. QUSBA: I'm good, Your Honor.
THE COURT: All right. Let me have Ms. Starr step up here then. Anybody else?
MS. STARR: Yes, Your Honor.
THE COURT: It's up to you, of course, but if you wanted to put something -- when you're revising this order anyway, if you wanted to put something in there -- I understand that Mr. Ratelle doesn't accept it, but if you wanted to put something in there about that to clarify that issue, that might be helpful overall.
We also have -- I am not going to rule on this until Thursday. There's still a chance for people to talk on this and still come to some kind of an agreement, which is always better than the alternative. And so we have a lot of smart people in this room and you all did an excellent job today and you were all very professional and courteous with each other and it's a long day and I appreciate that and you did a nice job of settling as much as you possibly could, but you have some

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time. You got a large team there. You got a lot of people. You might spend some time exploring whether or not there's anything that can be worked out.
I don't know what's going on behind the scenes, so I may be talking about something that's totally impossible, but you might spend some time during the little bit of time we have before now and some point Thursday morning seeing if you can't resolve -- I know Ms. Wencil is also out there, but see if you can't resolve the final piece here, except for Ms. Wencil. Maybe you can resolve that, too, in some manner. That's just a -- that's just a thought.
Otherwise, I will rule on this Thursday morning. Again, I suggest that the parties spend a little bit of time talking about and seeing if there's some kind of language that might give Mr. Ratelle and his group some kind of comfort to the extent that if the arguments they make somehow work that they are not somehow precluded from making them later on.
MS. STARR: Your Honor, thank

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you. We will certainly confer on those issues.

THE COURT: Yes. Whether you agree with them or not, there's something -- you can always improve the order as well any which way you would like, but I need to see the order, of course, sometime tomorrow. And when would that be?

MS. STARR: Well, I think, Your Honor, we would -- we would hope to get it to you certainly by noon. There may be some discussions that are had that take a little longer because if it's not just a reflection of the changes from -- that were proposed today, but also perhaps some additional language with respect to Mr. Ratelle, that may take just a little longer to negotiate.

THE COURT: I don't know how I am going to rule on this, but a couple of things on the proposed order. Some parts of the order just simply incorporate so and so releases so and so, that's not necessary in an order. I don't order people to release each other. It's in the stipulation. You can say the stipulation is approved and don't

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have to put terms of the stipulation as incorporated into the order itself.

There's also a provision there -- I know it's fairly common, but it does bother me and there's a provision in there about that I am ordering state officials to do various things. If they won't do it, you can come to me, but I have a concern about ordering state officials to do things, maybe because I once was one. I don't think it changes very much. I know it's boiler plate that appears in a lot of this stuff and if you are having a problem with a some state official out there, we can deal with that or AK can come in or whoever has to come in can deal with that issue.

All right. We have been here long enough.

Is there anything else anybody needs to say? Yes, Mr. Meyer.

MR. MEYER: I do. We have two other --

THE COURT: Why don't you step up to the lectern.

MR. MEYER: Everyone is shocked to see me speaking at this point, so I will

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make it brief.

Actually we have a motion to seal the exhibits that were filed with our objection. JP Morgan has a motion to seal their objection -- there was no objection.

THE COURT: Thank you for raising that. There were no objections to it and they were sealed as a matter of course and will remain so since nobody objected. Is there anything -- thank you for raising that so there's not a loose end here and we will reflect that that order has been granted.

Is there anything else that anybody else has here? I shouldn't have asked that question.

MS. MCGREAL: Your Honor, I just have two things. One, is sort of an administrative clarification on something you just said.

The second is a settlement or a resolution that we have put into the order that I just all day had sort of forgot to put in the order and it's with the Unsecured Creditor's Committee who you will notice did not object. We have worked with them since the filing of

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the motion and on Page 85 of the black line of the order, Paragraph 80 -- I have another copy if Your Honor needs.

THE COURT: Oh, it's around here somewhere.

MS. MCGREAL: It's Paragraph 80 and it talks about implementing a claims oversight committee and essentially after the effective date the debtors have agreed to put together a committee of sorts which will include Mr. Talarico, a representative that the Unsecured Creditor's Committee appoints, and a representative from the Ad Hoc Group, and they will be tasked with approving sort of the claims reconciliation process in this case and avoidance actions and things that are really for the benefit of unsecured creditors to make sure that they continue to have a voice and are the proper parties to be in charge of those matters, so we have put that into the order and we have put the process in there and we were happy to reach that with them and continue to have --

I will also note the final DIP order that we have been talking about actually did carve

out avoidance actions, proceeds from the collateral that we have sort of been talking about in a different way, but that's actually for the benefit of the unsecured creditors, so it's very important that they be involved in that process and that's the provision of the order.

The one other point I was just going to make, Your Honor, is I understand that you did not want a stipulation -- or certain agreements in here that are otherwise in the stipulation. I think we may have a few additions just based on the agreement that we have reached with Mr. Fleck's clients and that's really because we think it's best to just to revise the order and not revise the whole Global Settlement Agreement, so with apologies, we may have one or two that we otherwise would not normally put in?

THE COURT: All right. Well, again, thank you all very much.

Mr. Ratelle, it's no fun being in your position. You did a very nice job today. It's no fun being the one person at the end of the day who's left. You did a nice job

with this today. I know it's hard when people -- you got everybody against you and --

MR. RATELLE: (Unintelligible).

THE COURT: Well, I just want to make a comment you all did a nice job today arguing your points in a professional and courteous manner and as Mr. Fleck pointed out, this is not an easy matter. It's not an easy case. There's been -- it's been difficult for a lot of people. I know a lot of you or all of you worked very hard on this and so I do appreciate those efforts.

We will get word out to you tomorrow when the -- what time on Thursday. That will be telephonic. I will do my decision that may -- which may require some revisions to the order.

Again, you may consider some of the things I have said tonight and revise some things even as we -- even the next version that comes in.

Make sure things are red lined for the benefit of everyone, including -- you can send red line versions to chambers and copy

the appropriate parties.

Again, thank you all very much. It's been a long day. I know you're all hungry and anxious and to get home, so thank you all very much.

* * *

STATE OF MINNESOTA)
) ss.
COUNTY OF DAKOTA)

BE IT KNOWN, that I transcribed the digitally recorded proceedings held at the time and place set forth herein above;

That the proceedings were recorded electronically and stenographically transcribed into typewriting, that the transcript is a true record of the proceedings, to the best of my ability;

That I am not related to any of the parties hereto nor interested in the outcome of the action;

WITNESS MY HAND AND SEAL:

S/ LESLIE PINGLEY

Leslie Pingley
Notary Public