

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF COLORADO

In re: ) Case No. 15-16835 MER  
)  
MIDWAY GOLD US INC. *et al.*,<sup>1</sup> ) Chapter 11  
) Jointly Administered Under  
Debtors. ) Case No. 15-16835 MER  
)

---

MOTION OF DEBTORS AND DEBTORS IN POSSESSION FOR ENTRY OF AN ORDER (A) AUTHORIZING THE PRIVATE SALE OF THE TONOPAH PROJECT FREE AND CLEAR OF LIENS, CLAIMS, AND INTERESTS PURSUANT TO SECTIONS 363(b) AND (f) OF THE BANKRUPTCY CODE, (B) APPROVING THE ASSET PURCHASE AGREEMENT WITH 0862130 CORP., AND (C) GRANTING RELATED RELIEF

---

Midway Gold US Inc. (“MGUS”) and its affiliated debtors and debtors in possession (the “Debtors”) hereby file this *Motion for Entry of an Order (A) Authorizing the Private Sale of the Tonopah Project Free and Clear of Liens, Claims, and Interests Pursuant to Sections 363(b) and (f) of the Bankruptcy Code, (B) Approving the Asset Purchase Agreement with 0862130 Corp., and (C) Granting Related Relief* (the “Motion”). In support of the Motion, the Debtors respectfully state as follows:

**PRELIMINARY STATEMENT**

This Motion seeks authority to sell MGUS’s Tonopah Project (as defined below) to 0862130 Corp. (the “Buyer”), a wholly owned subsidiary of Aintree Resources Inc. (“Aintree”) by private sale for \$25,000.00 in cash, the assumption of certain royalty and reclamation obligations and other valuable consideration (the “Aintree Sale”) on the terms set forth in the

---

<sup>1</sup> The Debtors and their respective case numbers are: Midway Gold US Inc. (15-16835 MER); Midway Gold Corp. (15-16836 MER); Golden Eagle Holding Inc. (15-16837 MER); MDW-GR Holding Corp. (15-16838 MER); RR Exploration LLC (15-16839 MER); Midway Services Company (15-16840 MER); Nevada Talon LLC (15-16841 MER); MDW Pan Holding Corp. (15-16842 MER); MDW Pan LLP (15-16843 MER); MDW Gold Rock LLP (15-16844 MER); Midway Gold Realty LLC (15-16845 MER); MDW Mine ULC (15-16846 MER); GEH (B.C.) Holding Inc. (15-16847 MER) , GEH (US) Holding Inc. (15-16848 MER).

executed Asset Purchase Agreement (the “APA”) attached hereto as Exhibit A.

As the Bankruptcy Court is aware, the Debtors conducted a fulsome sale process and sold substantially all of their assets, other than the Tonopah Project, earlier in these cases. However, the earlier sale process produced no buyer for the Tonopah Project, in part, because of the significant royalty and reclamation obligations associated with the project. Nonetheless, the Debtors and their advisors continued to work diligently, in consultation with the project’s royalty holders and the other key parties in these cases, to identify purchasers for the Tonopah Project. The Debtors have concluded that the Aintree Sale represents the only viable alternative to sell or otherwise dispose of the Tonopah Project and will maximize value under the circumstances.

In part, value is being maximized because the proposed sale will relieve MGUS’ estate of approximately \$550,000 in pre-petition royalty claims, post-petition royalty claims and ongoing reclamation obligations, which the Buyer has agreed to assume on the terms set forth in the APA. The proposed sale is expected to close quickly and will generate not less than \$25,000.00 in gross cash proceeds that will inure to the benefit of MGUS and its estate and creditors.

For these reasons, and those set forth below, the Debtors respectfully submit that the relief requested in this Motion is justified, will maximize value and otherwise benefit the Debtors’ estates and creditors, and should be approved.

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over these cases under 28 U.S.C. §§ 157 and 1334.
2. This matter is a core proceeding under 28 U.S.C. § 157(b)(2).
3. The Debtors’ corporate headquarters and their executive level and senior management were all located in Englewood, Colorado as of the Petition Date and had been for

the 180 days immediately prior to the Petition Date. Accordingly, venue of these cases and related proceedings is proper in this District under 28 U.S.C. §§ 1408 and 1409.

### **BACKGROUND**

4. On June 22, 2015 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors are continuing in possession of their property and are operating and managing their business and affairs as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

5. On July 1, 2015, the Office of the United States Trustee appointed the Official Committee of Unsecured Creditors in these cases (the "Committee"). No trustee or examiner has been appointed.

6. The Debtors hereby incorporate by reference the factual background set forth in the *Declaration of Bradley J. Blacketer in Support of Chapter 11 Petitions and Various First Day Applications and Motions* [Docket No. 22], which includes, *inter alia*, a detailed description of the Debtors' business and affairs, the Debtors' capital structure and prepetition indebtedness, and the events leading to the commencement of these cases.

7. The Debtors also incorporate by reference the factual record set forth at the May 9, 2016 hearing to approve the sale of substantially all of the Debtors' then-remaining assets to support the extent and sufficiency of the sale process previously conducted by the Debtors and their efforts to identify all available transactions, including for the Tonopah Project.

### **The Tonopah Project**

8. Pursuant to a series of amendments to an Option Agreement dated July 2, 2001, MGUS acquired a 100% interest in the Tonopah property, comprised of 245 unpatented lode

mining claims in Nye County, Nevada (the “Tonopah Project”). The Tonopah Project is located approximately 15 miles northeast of the town of Tonopah, 210 miles northwest of Las Vegas and 236 miles southeast of Reno, Nevada. The property is on the northeastern flank of the San Antonio Mountains and in the Ralston Valley.

9. MGUS was required to pay a sliding scale royalty on NSR from any commercial production from 2% to 7%, based on changes in gold prices and an advance minimum royalty recoverable from commercial production of \$300,000 per year. MGUS entered into an agreement allowing payment of only \$50,000 of the \$300,000 payment due on August 2014. The remaining \$250,000, along with the \$300,000 payment due in August 2015, was to be paid subsequently to the economic completion of the Pan gold mine project. As of the Petition Date, production had not begun at the Tonopah Project.

10. The Tonopah Project has reclamation obligations of approximately \$130,000. To secure the payment and performance of any reclamation obligations associated with the Tonopah Project, a surety bond was issued by Aspen American Insurance Company (“Aspen”). MGUS must either maintain these surety bonds or post cash collateral to cover the reclamation obligations.

#### **Prior Efforts to Sell Tonopah and the Proposed Sale**

11. Pursuant to the Court’s March 25, 2016 order (Docket No. 797) approving bidding and auction procedures for the sale of substantially all of the Debtors’ remaining assets, the Debtors sought to identify, among other things, purchasers for the Tonopah Project. Although some prospective purchasers expressed interest in the Tonopah Project, the Debtors did not receive a binding offer, which the Debtors believe was primarily due to the existence of royalty and reclamation obligations associated with the Tonopah Project.

12. The Debtors engaged with the royalty holders for the Tonopah Project as well as other key parties including the Commonwealth Bank of Australia (“CBA”), as the senior prepetition agent, Hale Capital Partners (“Hale”), as the subordinate prepetition agent, and the Committee, regarding maintaining the Debtors’ claims in the Tonopah Project and locating a purchaser for the asset. Because the existence of substantial royalty obligations were an impediment to finding a willing purchaser in the Debtors’ prior sale efforts, it was critical to locate a purchaser acceptable to the royalty holders and able to reach an agreement with the royalty holders with respect to the treatment of the royalty obligations. The purchaser also had to relieve Aspen of its reclamation guarantee obligations by either replacing the existing bonds or posting cash collateral for the reclamation obligations.

13. The Debtors and their advisors focused their efforts on a potential transaction with a purchaser identified by certain of the royalty holders. However, notwithstanding significant efforts and negotiations, the purchaser was unable to obtain necessary financing for the project and, as a result, declined to move forward.

14. The only other viable offer acceptable to the Debtors and the royalty holders was the offer from the Buyer to purchase the Tonopah Project for \$25,000.00 in cash and other valuable consideration, including the assumption of royalty and reclamation obligations.

15. The terms of the proposed sale are set forth in detail in the APA. However, the following is a summary of the material provisions (capitalized terms shall have the meanings given in the APA)<sup>2</sup>:

- Seller. Debtor MGUS.
- Purchase Price. \$25,000.00 cash, plus assumption of all Existing Claims and Assumed Liabilities, as defined in the APA, including pre-petition and post-petition royalty claims,

---

<sup>2</sup>To the extent that the summary of terms differs in any respect with the APA, the APA shall control.

and assumption of the performance of all Reclamation Obligations, as defined in the APA.

- Purchased Assets. MGUS's 100% interest in the Tonopah Project.
- Reclamation Bonding. The Buyer is responsible for promptly replacing the Reclamation Bonds. The Aspen bonds and associated indemnity agreements will be cancelled.
- Closing Date. Third business day after satisfaction of the closing conditions identified in the APA.

### **RELIEF REQUESTED**

16. The Debtors respectfully request that the Court enter an order (the "Sale Order"), substantially in the form attached hereto, (i) authorizing the sale of the Tonopah Project on the terms set forth in the APA by private sale and without any further sale or auction process, (ii) authorizing, but not directing, the Debtors to execute, deliver, and perform the APA, (iii) authorizing, but not directing, the Debtors to assume and assign the Existing Claims and Assumed Liabilities to the Buyer, (iv) waiving the 14-day stay otherwise applicable under Rule 6004(h) of the Federal Rules of Bankruptcy Procedure, and (v) granting such other relief as the Court deems just and proper.

17. The Debtors have been advised that CBA, Hale and the Committee all support the proposed sale.

### **BASIS FOR RELIEF**

#### A. General Standard

18. The Debtors have the power, after notice and a hearing, to sell property of the estate outside of the ordinary course of business. 11 U.S.C. § 363(b). In determining whether to approve such a request, bankruptcy courts generally apply the "business judgment rule." *See, e.g., In re Castre, Inc.*, 312 B.R. 426, 428 (Bankr. D. Colo. 2004); *In re Psychrometric Sys.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007). In particular, a sale outside of the ordinary course of

business should be approved if: (i) a sound business reason exists to sell the property; (ii) adequate and reasonable notice of the terms has been given to parties in interest; (iii) the proposed sale price is fair and reasonable; and (iv) the buyer has acted in good faith. *In re Buerge*, 2014 Bankr. LEXIS 1264, at 34-35 (B.A.P. 10th Cir. Apr. 2, 2014).

19. In assessing the good faith of a purchaser, courts have considered factors such as: (i) whether the sale was negotiated at arm's length; (ii) whether any officer or director of the debtor holds any interest in or is otherwise related to the potential purchaser; and (iii) whether fraud or collusion exists among the prospective purchaser, any other bidders or the trustee. *Id.* at 53. Additionally, the United States Court of Appeals for the Tenth Circuit has defined a good faith purchaser as one who buys (i) "in good faith," i.e., through a sale that does not involve "fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders," and (ii) for "value," i.e., by paying "at least 75% of the appraised value of the assets." *In re Bel Air Associates, Ltd.*, 706 F.3d 301, 305 & nn. 11-12 (10th Cir. 1983).

20. In reviewing proposed transactions outside the ordinary course under section 363(b), bankruptcy courts should give great judicial deference to the debtor's business judgment. *See, e.g., Psychrometric Sys.*, 367 B.R. at 674; *Esposito v. Title Ins. Co. of Pa. (In re Fernwood Mkts.)*, 73 B.R. 616, 621 n.2 (Bankr. E.D. Pa. 1987). However, "the court must always scrutinize whether the trustee has fulfilled his duty to maximize the value obtained from a sale, particularly in liquidation cases." *Psychrometric Sys.*, 367 BR. At 674 (internal quotations and citations omitted).

B. Sales Outside the Ordinary Course can be Through Private Sales

21. Importantly, a sale outside of the ordinary course of business can be by private sale or public auction. Fed. R. Bankr. P. 6004(f)(1). Indeed, bankruptcy courts have “wide latitude” in approving private sales. *In re Ancor Exploration Co.*, 30 B.R. 802, 808 (N.D. Okla. 1983). In approving or disapproving private sales, courts have focused on the sufficiency of the evidence presented in demonstrating that the proposed purchase price maximizes value and whether the debtor’s estate would benefit from competitive bidding. See, e.g. *Psychrometric Sys.*, 367 B.R. at 677 (denying a private sale where the Court believed “the estate would benefit from a more competitive and complete bidding process”); *In re Donohue*, 410 B.R. 311, 315 (Bankr. D. Kan. 2009) (denying a private sale because “the asset could draw a higher price through competitive bidding.”). If a trustee has not solicited other prospective purchasers, a court may consider whether there are facts that justify the trustee not doing so. *In re Ancor*, 30 B.R. at 808.

22. Moreover, in the context of approving a private sale, this Court has explained that “in the absence of any likelihood of a competing bid, the Trustee is not required to conduct an auction.” *In re Brumfiel*, 2015 Bankr. LEXIS 896, \*21 (Bankr. D. Colo. March 20, 2015).

C. Sales Free and Clear of Liens, Claims, and Other Interests

23. Pursuant to section 363(f) of the Bankruptcy Code, the Court may authorize the sale of assets free and clear of existing liens, claims and encumbrances, if any, if:

- (a) applicable non-bankruptcy law permits the sale of such property free and clear of such interest;
- (b) the entity holding the lien, claim or encumbrance consents to the proposed sale;
- (c) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(d) such interest is in bona fide dispute; or

(e) 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); *see also In re Old CarCo LLC*, 2010 U.S. Dist. LEXIS 143101, at \*6 (S.D.N.Y. July 2, 2010).

D. The Proposed Sale Meets the Business Judgment Test and Should be Approved

24. The Debtors have determined, in an exercise of their business judgment, that the Aintree Sale is the only viable alternative and will maximize the value of the Tonopah Project under the circumstances, especially having previously conducted a fulsome sale process that failed to result in a binding offer for the Tonopah Project. The Aintree Sale will provide MGUS' estate with cash proceeds, which will be used to defray the sale costs and will serve as an additional source of recovery under the Debtors' proposed plan of liquidation (a second amended version of which will be filed with the Court shortly and will provide for a settlement with Jacobs Field Services North America, Inc. ("Jacobs"), a mechanic's lien claimant, based in part on the closing of the Aintree Sale). The Aintree Sale will also relieve the Debtors' estates from significant prepetition and postpetition royalty obligations, and potential reclamation obligations with the Bureau of Land Management that are associated with the Tonopah Project, which are being assumed as part of the Aintree Sale.

25. To the best of the Debtors' knowledge, the only creditors who assert liens or interests with respect to the Tonopah Project are CBA, Hale, and the royalty holders, each of whom have consented to the Aintree Sale. As such, the Debtors submit that the standard for a sale of the Tonopah Project free and clear of all liens, claims, and encumbrances that might otherwise exist pursuant to section 363(f) of the Bankruptcy Code has been met. Any purported

liens, claims, interests and encumbrances on or in the Tonopah Property will attach to the sale proceeds in the same priority and to the same extent as they may currently exist; provided, however, that the sale proceeds will be used as contemplated by the settlement reached between CBA, Hale and Jacobs, which will be set forth in a second amended version of the Debtors' proposed joint plan of liquidation to be filed with the Bankruptcy Court.

26. For these reasons, the Debtors respectfully submit that the proposed sale is in the best interest of the Debtors' estates and creditors, will maximize value, and should be approved.

F. Waiver of 14-Day Stay

27. To facilitate the consummation of the proposed sale as soon as practicable after entry of the Sale Order, the Debtors respectfully request that the Bankruptcy Court suspend the operation of the 14-day stay under Fed. R. Bankr. P. 6004(h).

WHEREFORE, the Debtors respectfully request that the Court enter the Sale Order, substantially in the form attached hereto, granting the relief requested herein and such other relief as the Bankruptcy Court deems just and proper.

Dated: February 23, 2017

Respectfully submitted,

SQUIRE PATTON BOGGS (US) LLP

/s/ Stephen D. Lerner

Stephen D. Lerner (Ohio #0051284)  
Squire Patton Boggs (US) LLP  
221 E. Fourth Street, Suite 2900  
Cincinnati, OH 45202  
(513) 361-1200 (phone)  
(513) 361-1201 (fax)  
Stephen.lerner@squirepb.com  
Admitted to District Court for District of  
Colorado

Nava Hazan (NY # 3064409)  
Squire Patton Boggs (US) LLP  
30 Rockefeller Plaza, 23<sup>rd</sup> Floor  
New York, NY 10112  
(212) 872-9800  
(212) 872-9815  
Nava.hazan@squirepb.com  
Admitted to District Court for District of  
Colorado

SENDER WASSERMAN WADSWORTH, P.C.

/s/ Aaron J. Conrardy

Harvey Sender, #7546  
Aaron J. Conrardy, #40030  
1660 Lincoln Street, Suite 2200  
Denver, Colorado 80264  
(303) 296-1999; (303) 296-7600 (fax)  
hsender@sww-legal.com  
aconrardy@sww-legal.com

**Attorneys for the Debtors and Debtors in  
Possession**

**EXHIBIT A**

Asset Purchase Agreement

**ASSET PURCHASE AGREEMENT**

**BY AND BETWEEN**

**MIDWAY GOLD US INC.,**

**as SELLER,**

**and**

**0862130 CORP.,**

**as BUYER**

**DATED AS OF**

**FEBRUARY \_\_\_\_, 2017**

**TABLE OF CONTENTS**

	<b>Page</b>
ARTICLE 1	1
DEFINITIONS.....	1
ARTICLE 2	8
PURCHASE AND SALE.....	8
Section 2.1	8
Purchase and Sale of Assets.....	8
Section 2.2	9
Excluded Assets.....	9
Section 2.3	10
Assumed Liabilities .....	10
Section 2.4	10
Excluded Liabilities .....	10
Section 2.5	11
Exclusion of Assigned Contracts.....	11
Section 2.6	11
Non-Assignable Purchased Assets.....	11
Section 2.7	12
Purchase Price.....	12
Section 2.8	12
Closing.....	12
Section 2.9	12
Transactions to Be Effected at the Closing.....	12
Section 2.10	13
Allocation of Purchase Price.....	13
ARTICLE 3	14
REPRESENTATIONS AND WARRANTIES OF SELLER.....	14
Section 3.1	14
Organization .....	14
Section 3.2	14
Due Authorization, Execution and Delivery; Enforceability.....	14
Section 3.3	14
No Conflicts; Consents .....	14
Section 3.4	14
Assets.....	14
Section 3.5	15
Material Contracts.....	15
Section 3.6	16
Legal Proceedings.....	16
Section 3.7	16
Compliance with Laws; Permits .....	16
Section 3.8	16
Environmental and Health and Safety Matters .....	16
Section 3.9	17
Taxes.....	17
Section 3.10	17
Intellectual Property.....	17
Section 3.11	18
Financial Advisors .....	18
Section 3.12	18
Reclamation Bonds.....	18
Section 3.13	18
No Other Representations and Warranties.....	18
ARTICLE 4	18
REPRESENTATIONS AND WARRANTIES OF BUYER.....	18
Section 4.1	18
Organization .....	18
Section 4.2	18
Due Authorization, Execution and Delivery; Enforceability.....	18
Section 4.3	18
No Conflicts; Consents .....	18
Section 4.4	19
Financial Advisors .....	19
Section 4.5	19
Sufficiency of Funds.....	19
Section 4.6	19
Solvency .....	19
Section 4.7	19
Legal Proceedings.....	19
Section 4.8	19
Independent Investigation.....	19
ARTICLE 5	19
COVENANTS .....	19
Section 5.1	19
Conduct of Business Prior to the Closing.....	19
Section 5.2	20
Access to Information.....	20
Section 5.3	21
Notice of Certain Events.....	21
Section 5.4	21
Confidentiality .....	21
Section 5.5	21
Governmental Approvals and Other Third-Party Consents.....	21
Section 5.6	22
Books and Records .....	22
Section 5.7	22
Closing Conditions .....	22
Section 5.8	22
Public Announcements .....	22
Section 5.9	22
Further Assurances .....	22
Section 5.10	23
Transfer Taxes .....	23
Section 5.11	23
Replacement of Reclamation Bonds.....	23
Section 5.12	23
Financing .....	23

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
Section 5.13 Nature of Transaction .....	23
Section 5.14 Supplements to Schedules .....	24
Section 5.15 Bankruptcy Matters.....	24
<b>ARTICLE 6 CONDITIONS TO CLOSING .....</b>	<b>26</b>
Section 6.1 Conditions to Obligations of All Parties.....	26
Section 6.2 Conditions to Obligations of Buyer .....	26
Section 6.3 Conditions to Obligations of Seller.....	27
<b>ARTICLE 7 TERMINATION.....</b>	<b>28</b>
Section 7.1 Termination by the Parties.....	28
Section 7.2 Effect of Termination.....	29
<b>ARTICLE 8 MISCELLANEOUS .....</b>	<b>30</b>
Section 8.1 Survival.....	30
Section 8.2 Expenses .....	30
Section 8.3 Notices .....	30
Section 8.4 Interpretation.....	31
Section 8.5 Headings .....	31
Section 8.6 Severability .....	31
Section 8.7 Entire Agreement.....	31
Section 8.8 Successors and Assigns .....	31
Section 8.9 No Third-Party Beneficiaries.....	31
Section 8.10 Amendment and Modification; Waiver .....	31
Section 8.11 Governing Law; Submission to Jurisdiction; Venue .....	32
Section 8.12 Specific Performance.....	32
Section 8.13 Limitation on Damages.....	32
Section 8.14 Disclosure Schedules .....	32
Section 8.15 Counterparts.....	32

## **ASSET PURCHASE AGREEMENT**

THIS ASSET PURCHASE AGREEMENT (this “Agreement”), dated as of February \_\_\_\_, 2017, is entered into by and among Midway Gold US Inc., a Nevada corporation (“Seller”), and 0862130 Corp., a Nevada corporation (“Buyer”).

### **RECITALS**

A. On June 22, 2015 (the “Petition Date”), Seller filed a voluntary petition for relief (commencing the “Chapter 11 Cases”) under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Colorado (the “Bankruptcy Court”).

B. Seller operates, among other things, the project set forth on the Schedule of Projects attached hereto (the “Project”).

C. Upon the terms and subject to the conditions contained in this Agreement, and as authorized under sections 105, 363 and 365 of the Bankruptcy Code, Seller wishes to sell to Buyer, and Buyer wishes to purchase from Seller, all of the right, title and interest of Seller in the Purchased Assets (as defined below), including Seller’s interests in the Project, and to assume from Seller the Assumed Liabilities.

In consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### **ARTICLE 1** **DEFINITIONS**

The following terms have the meanings specified or referred to in this ARTICLE 1:

“Affiliate” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“Agreement” has the meaning set forth in the Preamble.

“Allocation Schedule” has the meaning set forth in Section 2.10.

“Aspen” means Aspen American Insurance Company and its affiliates, collectively.

“Assigned Contracts” means the Contracts in which Seller or any of its Affiliates has an interest relating to the Business set forth in Schedule 2.1(e).

“Assumed Liabilities” has the meaning set forth in Section 2.3.

“Bankruptcy Code” has the meaning set forth in the recitals.

“Bankruptcy Court” has the meaning set forth in the recitals.

“Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure, as in effect from time to time.

“Bid Procedures Order” means the Order of the Bankruptcy Court entered on March 26, 2016 (Doc. No. 797) pursuant to sections 105, 363, and 365 of the Bankruptcy Code, (i) establishing procedures and a timeline for the conduct of a competitive sale process and the solicitation of bids for the sale of substantially all of the Debtors’ assets or any portion thereof, (ii) authorizing, but not directing, the Debtors, in consultation with their retained professionals and advisors, to conduct a sale of substantially all of their assets or any portion thereof in accordance with such approved procedures, (iii) authorizing, but not directing, the Debtors to designate one or more Stalking Horse(s) if the Debtors determine that it would benefit the sale and bidding process to do so and to grant such Stalking Horse(s) the Stalking Horse Protections or any portion thereof, in each case in the sole discretion of the Debtors and without further application to or Order of the Bankruptcy Court but subject to the filing of a Notice of Designation of Stalking Horse, (iv) scheduling an auction for the sale of any assets for which more than one qualified bid is received in accordance with the approved bidding procedures, (v) establishing procedures for the conduct of such auction, and (vi) scheduling a Sale Hearing.

“Bonding Collateral” means the cash and other assets pledged as collateral for the Reclamation Obligations.

“Books and Records” means books and records, including books of account, ledgers and general, financial and accounting records, machinery and equipment maintenance files, suppliers lists, production data, quality control records and procedures, assay reports, environmental studies, reports and analysis, mine plans, nonproprietary mining and reserve models, sales records, tax records, strategic plans, material and research, including all technical records, files, papers, surveys and plans or specifications.

“Business” means the business conducted by Seller with respect to the Purchased Assets and the Project.

“Business Day” means any day except Saturday, Sunday or any other day on which commercial banks located in Denver, Colorado are closed for business.

“Buyer” has the meaning set forth in the Preamble.

“Cash Amount” has the meaning set forth in Section 2.7(a)(i).

“Chapter 11 Cases” has the meaning set forth in the recitals.

“Claims” means all rights or causes of action (whether in law or equity), legal proceedings, obligations, demands, restrictions, warranties, guaranties, indemnities, consent rights, options, contract rights, rights of recovery, setoff, recoupment, indemnity or contribution, 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 Chapter 11 Cases, and whether imposed by agreement, understanding, law, equity or otherwise, including all “claims” as defined in section 101(5) of the Bankruptcy Code.

“Closing” has the meaning set forth in Section 2.8.

“Closing Date” has the meaning set forth in Section 2.8.

“Code” means the Internal Revenue Code of 1986, as amended.

“Confidentiality Agreement” means that certain Confidentiality Agreement entered into as of April 16, 2014 by and between Midway Gold Corp. and James Hesketh.

“Contract” means any agreement, indenture, contract, lease, deed of trust, royalty, license, option, instrument, or other written commitment.

“Cure Amounts” means the amounts which must be paid or otherwise satisfied by Buyer, including pursuant to Sections 365(b)(1)(A) and (B) of the Bankruptcy Code, in connection with the assumption and/or assignment of the Assigned Contracts to Buyer as provided herein as those amounts are allowed by the Bankruptcy Court, unless such amounts are otherwise agreed upon by Buyer and the counterparty to the applicable Assigned Contract, including the Cure Amounts set forth on Schedule 3.5(c) (as may be supplemented or modified in accordance with Section 2.5 and Section 5.14).

“Cut-Off Date” has the meaning set forth in Section 2.5.

“Debtors” means each of the debtors and debtors in possession in the Chapter 11 Cases.

“Deposits” has the meaning set forth in Section 2.1(l).

“Disclosed Litigation” means those actions, suits, claims and legal proceedings set forth in Schedule 3.6.

“Disclosure Schedules” means the Disclosure Schedules delivered by Seller concurrently with the execution and delivery of this Agreement and all references in this Agreement to a particular Schedule are references to Schedules in the Disclosure Schedules and not schedules to this Agreement.

“Dollars” and “\$” means the lawful currency of the United States.

“Drop Dead Date” has the meaning set forth in Section 7.1(b)(i).

“Employee Benefit Plan” means any “employee benefit plan” (as such term is defined in ERISA Section 3(3), whether or not ERISA applies), and any profit-sharing, bonus, incentive, stock option, stock purchase, stock ownership, pension, retirement, severance, termination, deferred compensation, excess benefit, supplemental unemployment, post-retirement medical or life insurance, welfare, incentive, sick leave, long-term disability, medical, hospitalization, life insurance, other insurance or employee benefit plan, whether formal or informal, oral or written, that, in each case, is sponsored, maintained or contributed to, or required to be contributed to, by Seller or any ERISA Affiliate or under which Seller has or any ERISA Affiliate has, or may have, any present or future liability.

“Encumbrance” means any lien, pledge, mortgage, deed of trust, security interest, charge, claim, easement, encroachment or other similar encumbrance.

“Environmental Claim” means any action, suit, claim, investigation or other legal proceeding alleging liability of whatever kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resources damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from: (i) the presence, Release of, or exposure to, any Hazardous Materials, or (ii) any actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit.

“Environmental Law” means any applicable Law, Governmental Order or binding agreement with any Governmental Authority: (i) relating to pollution (or the cleanup thereof) or the protection of natural resources, endangered or threatened species, or the environment (including ambient air, soil, surface water or groundwater, or subsurface strata), or (ii) concerning the Release or presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation,

reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Materials.

“Environmental Notice” means any written directive, notice of violation or infraction, or notice or written communication from a Governmental Authority relating to actual or potential material liability arising under or material non-compliance with any Environmental Law or any material term or condition of any Environmental Permit.

“Environmental Permit” means any Permit, letter, clearance, consent, waiver, closure, exemption, decision or other action required under or issued, granted, given, authorized by or made pursuant to Environmental Law.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” means each entity that is treated as a single employer with Seller for purposes of Code section 414.

“Excluded Assets” has the meaning set forth in Section 2.2.

“Excluded Contracts” means any Contract that is not an Assigned Contract.

“Excluded Liabilities” has the meaning set forth in Section 2.4.

“Existing Claims” means those certain claims and/or potential Losses related to an advance royalty and a sliding scale production royalty from 2%-7%, pursuant to the InFaith Option Agreement.

“FIRPTA Certificate” has the meaning set forth in Section 6.2(e).

“Governmental Authority” means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authorities have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

“Governmental Order” means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority, and does not mean or include any Permit.

“GRP Transactions” means the transactions contemplated by that certain Asset Purchase Agreement dated as of April 28, 2016, by and among Midway Gold US Inc., Golden Eagle Holding Inc., RR Exploration LLC, MDW Pan LLP and MDW Gold Rock LLP, as sellers, and GRP Minerals, LLC, as buyer.

“Hazardous Materials” means: (i) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or man-made, that is hazardous, acutely hazardous, toxic, or words of similar import or regulatory effect under Environmental Laws, and (ii) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation and polychlorinated biphenyls.

“Health and Safety Claim” means any action, suit, claim, investigation or other legal proceeding alleging liability of whatever kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, governmental response, personal injuries, medical monitoring, penalties, indemnification and injunctive relief) arising out of, based on or resulting from:

(i) the presence of, or exposure to, any workplace hazard, or (ii) any actual or alleged non-compliance with any Health and Safety Law or applicable implementing plan, agreement, or order.

“Health and Safety Law” means any applicable Law, Governmental Order or binding agreement with any Governmental Authority: (i) relating to workplace human health or safety, or (ii) human exposures, including the Federal Mine Safety and Health Act of 1977, as amended, the Occupational Safety and Health Act of 1970, as amended, implementing regulations, and similar state laws.

“Health and Safety Notice” means any written directive, notice of violation or infraction, or notice or written communication from a Governmental Authority relating to actual or potential liability arising under or non-compliance with any Health and Safety Law.

“InFaith Option Agreement” means that Option Agreement, dated July 2, 2001, as amended, by and between InFaith Community Foundation (as successor in interest to Paul G. Schmidt and Mary Ann Schmidt), and Thomas Patton and Linda Sue Patton and Midway Gold US Inc.

“Intellectual Property” means any and all of the following in any jurisdiction: (i) trademarks and service marks, including all applications and registrations and the goodwill connected with the use of and symbolized by the foregoing; (ii) copyrights, including all applications and registrations, and works of authorship, whether or not copyrightable; (iii) trade secrets and confidential know-how; (iv) patents and patent applications; (v) websites and internet domain name registrations; and (vi) all other intellectual property and industrial property rights and assets, and all rights, interests and protections that are associated with, similar to, or required for the exercise of, any of the foregoing.

“Intellectual Property Contracts” means all licenses, sublicenses, consent to use agreements, settlements, coexistence agreements, covenants not to sue, permissions and other Contracts (including any right to receive or obligation to pay royalties or any other consideration, other than production royalties or similar consideration), whether written or oral, relating to any Intellectual Property that is used in or necessary for the conduct of the Business as currently conducted to which Seller is a party.

“Knowledge” of Seller means the actual knowledge of Daniel Brosious, after making reasonable inquiry of other relevant officers and employees of Seller, but without the requirement to make any inquiries of third parties or Governmental Authorities or to perform any search of any public records.

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

“Leased Real Property” means real property (other than unpatented mining claims), including any associated royalties, leased by Seller and held for use in connection with the Business.

“Loss” or “Losses” means actual out-of-pocket losses, damages, liabilities, costs or expenses, including reasonable attorneys’ fees.

“Material Adverse Effect” means any event, occurrence, fact, condition or change that is materially adverse to the business, results of operations, financial condition, or assets of the Business taken as a whole; provided, however, that “Material Adverse Effect” shall not include any event, occurrence, fact, condition or change, directly or indirectly, arising out of or attributable to: (i) general economic or political conditions, (ii) conditions generally affecting the industries in which the Business operates, (iii) any changes in financial, banking or securities markets in general, including any disruption thereof and any decline in the price of any security or any market index or any change in prevailing interest rates or capital costs or commodity markets, (iv) acts of war (whether or not declared), armed hostilities or terrorism, or the escalation or worsening thereof, (v) any action required or permitted by this Agreement or any action taken (or omitted to be taken) with the written

consent of or at the written request of Buyer, (vi) any change in the price of gold or other relevant metals or any change in currency exchange rates, (vii) any changes in applicable Laws or accounting rules, (viii) the announcement, pendency or completion of the transactions contemplated by this Agreement, including losses or threatened losses of employees, customers, suppliers, distributors or others having relationships with the Business, (ix) any natural or man-made disaster or acts of God, (x) any failure by the Business to meet any internal or published projections, forecasts or revenue or earnings predictions (provided, however, that the underlying causes of such failures (subject to the other provisions of this definition) shall not be excluded), (xi) any matter of which Buyer is aware on the date hereof, or (xii) the pendency of the Chapter 11 Cases and any action approved by, or motion, application or request made before, the Bankruptcy Court, except in the case of clause (i), (ii) or (vii), where such change, effect, circumstance or event has a materially disproportionate effect on the Business, relative to comparable businesses operating in the mining industry.

“Material Contracts” means each Assigned Contract to which Seller or any of its Affiliates is a signatory that relates to the Business or the Purchased Assets (i) which, if terminated or modified or if it ceased to be in effect, would result in a Material Adverse Effect, (ii) that has annual payment obligations that are in excess of \$500,000 and which may not be cancelled on thirty (30) days’ prior notice or less, (iii) that relates to indebtedness for borrowed money, whether incurred, assumed, guaranteed or secured by any asset, with an outstanding principal amount in excess of \$500,000, (iv) that relates to the acquisition of any business (whether by merger, sale of stock, sale of assets or otherwise), for consideration in excess of \$500,000, (v) that materially limits or restricts the operator of the Business from engaging in any line of business, in any geographic area or with any other person, or (vi) that provides for the assumption of any material liability of any other Person by Seller.

“Material Permits” has the meaning set forth in Section 3.7(b).

“MGC Option Agreement” mean that certain Option Agreement dated 1 January, 2005, as amended, by and between Midway Gold Corporation and Seller f/k/a MGC Resources Inc.

“Order” means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

“Owned Mining Claims” means unpatented mining claims, including any associated royalties, owned by Seller or its Affiliates and held for use in connection with the Business.

“Permits” means all permits, licenses, franchises, approvals, authorizations and consents required to be obtained from Governmental Authorities and held for use in connection with the Business.

“Permitted Encumbrances” means: (i) liens for Taxes not yet delinquent or the amount or validity of which is being contested in good faith by appropriate proceedings, (ii) mechanics’, carriers’, workers’, repairers’ and similar liens arising or incurred in the ordinary course of business and that do not materially interfere with the operation of the Business in the ordinary course of business, (iii) environmental or health and safety regulations by any Governmental Authority, (iv) title of a lessor under a capital or operating lease, (v) terms and conditions of, and liens and security interests created by, any Material Contract that has been disclosed in the Disclosure Schedules, (vi) all covenants, conditions, restrictions, easements, charges, rights-of-way, title defects or other encumbrances on title and similar matters filed of record in the real property records to which they relate or are located in the Nevada State Office of the Bureau of Land Management or the Nevada Division of Water Resources and that do not materially interfere with the mine development and operation of the Business in the ordinary course of business, (vii) such liens, imperfections in title, charges, easements, restrictions, encumbrances or other matters that are due to zoning or subdivision, entitlement, and other land use Laws or regulations, (viii) encumbrances on, or reservations in, title arising by operation of any applicable United States federal, state or foreign securities Law, (ix) liens or encumbrances that arise solely by reason of acts of, or with the written approval of, Buyer, (x) liens

not created by Seller that affect the underlying interest of any Leased Real Property, Owned Mining Claims, or Water Rights and that do not, and would not, materially interfere with the mine development and operation of the Business in the ordinary course of business, (xi) any set of facts an accurate up-to-date survey would show, provided, however, that such facts do not materially interfere with the mine development and operation of the Business in the ordinary course of business, (xii) orders or rulings of the Nevada State Office of the Bureau of Land Management or the Nevada Division of Water Resources, (xiii) any Encumbrances listed in the Disclosure Schedules, (xiv) royalties or similar interests disclosed on Schedule 2.3(e) or Schedule 3.4(e), (xv) any Encumbrance that will no longer burden any of the Purchased Assets following the entry of the Sale Order by the Bankruptcy Court and (xvi) any other Encumbrance that would not have a Material Adverse Effect.

“Person” means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

“Petition Date” has the meaning set forth in the recitals.

“Project” has the meaning set forth in the recitals.

“Purchase Price” has the meaning set forth in Section 2.7(a).

“Purchased Assets” has the meaning set forth in Section 2.1.

“Reclamation Bonds” has the meaning set forth in Section 3.12.

“Reclamation Obligations” means all reclamation and similar obligations and liabilities arising from or related to Seller’s and its Affiliates’ ownership and operation of the Business and/or the Purchased Assets.

“Release” means any actual or threatened release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing or allowing to escape or migrate into or through the environment (including, without limitation, ambient air (indoor or outdoor), surface water, groundwater, land surface or subsurface strata or within any building, structure, facility or fixture).

“Representative” means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

“Sale Hearing” means the hearing conducted by the Bankruptcy Court to approve the transactions contemplated by this Agreement, which hearing may be the hearing on confirmation of Seller’s plan of liquidation.

“Sale Order” means an Order or Orders of the Bankruptcy Court (which may be in the form of an order confirming Seller’s plan of liquidation) issued pursuant to sections 105, 363, and 365 of the Bankruptcy Code, authorizing and approving, among other things, (a) the sale, transfer and assignment of the Purchased Assets to Buyer in accordance with the terms and conditions of this Agreement, free and clear of all Claims and Encumbrances (except for Permitted Encumbrances), (b) the assumption and assignment of the Assigned Contracts in connection therewith and (c) that Buyer is a “good faith” purchaser entitled to the protections of section 363(m) of the Bankruptcy Code.

“Seller” has the meaning set forth in the Preamble.

“Spring Valley Transactions” means the transactions contemplated by that certain Asset Purchase Agreement dated as of November 30, 2015, by and among Midway Gold US Inc., Nevada Talon LLC and Solidus Resources, LLC.

“Straddle Period” has the meaning set forth in Section 2.3(c).

“Tangible Property” means all tangible personal property listed on Schedule 2.1(g) and, to the extent not included therein, any tangible personal property included in the Purchased Assets.

“Tax” or “Taxes” means (i) all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, health and safety, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, customs, duties, unclaimed property and escheat obligations, or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties, and (ii) any liability for the payment of any amounts of the type described in clause (i) as a result of the operation of Law or any express or implied obligation to indemnify any other Person.

“Tax Return” means any return, document, declaration, report, election, estimated tax filing, claim for refund, declaration of estimated Tax, information return or statement or other document relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“Transfer Taxes” has the meaning set forth in Section 5.10.

“Transition Permit” has the meaning set forth in Section 5.5(b).

“Water Rights” means water rights owned or leased by Seller or its Affiliates and held for use in connection with the Business.

## ARTICLE 2 PURCHASE AND SALE

Section 2.1 Purchase and Sale of Assets. Subject to the terms and conditions set forth in this Agreement and in the Sale Order, at the Closing, Seller shall irrevocably sell, assign and transfer (and, in the case of the Water Rights and Assigned Contracts described in Schedules 2.1(d) and 2.1(e), respectively, cause its Affiliate to sell, assign and transfer) to Buyer, and Buyer shall purchase from Seller, free and clear of all Encumbrances other than Permitted Encumbrances, all of Seller’s (and, in the case of the Water Rights and Assigned Contracts described in Schedules 2.1(d) and 2.1(e), its Affiliate’s) right, title and interest in, to and under the following assets, properties and rights, whether held as an equitable interest, as a tenant in common interest or otherwise (the “Purchased Assets”):

- (a) Seller’s interest in the Project;
- (b) the Leased Real Property described in Schedule 2.1(b);
- (c) the Owned Mining Claims described in Schedule 2.1(c);
- (d) the Water Rights described in Schedule 2.1(d);
- (e) the Assigned Contracts described in Schedule 2.1(e);
- (f) the Permits;

- (g) the Tangible Property;
- (h) the Intellectual Property set forth on Schedule 2.1(h);
- (i) originals, or where not available, copies, of all Books and Records relating to the Business;
- (j) all of the rights of Seller and, to the extent applicable, its Affiliates under warranties, indemnities and all similar rights against third parties the extent related to the Business;
- (k) all insurance policies of Seller to the extent related to the Business;
- (l) deposits, prepaids, retainers and similar amounts made to vendors in connection with the Business relating to or arising in connection with any of the Assigned Contracts (collectively, "Deposits"), except for any Deposits made to or with Aspen and any Bonding Collateral; and
- (m) all Claims to the extent related to the Purchased Assets described in Section 2.1(a) through Section 2.1(l) or the Assumed Liabilities, but specifically excluding all Claims arising under chapter 5 of the Bankruptcy Code (i) against counterparties who are party to (or Affiliates of a party to) any Assigned Contract, (ii) otherwise arising under or related to the Purchased Assets, or (iii) against Buyer (or Buyer's Affiliates); provided, that the Debtors retain the right to assert any such Claims as a defense or objection to proofs of claim asserted against any of the Debtors or their respective bankruptcy estates in the Chapter 11 Cases.

Section 2.2 Excluded Assets. Other than the Purchased Assets, Buyer expressly acknowledges and agrees that it is not purchasing or acquiring, and Seller is not selling or assigning, any other assets or properties of Seller, and all such other assets and properties shall be excluded from the Purchased Assets (the "Excluded Assets"). For greater certainty, Excluded Assets include the following assets and properties of Seller:

- (a) all cash and cash equivalents, bank accounts and securities of Seller (including, without limitation, any Bonding Collateral and the proceeds of the Spring Valley Transactions and the GRP Transactions);
- (b) all accounts or notes receivable of the Business;
- (c) the Excluded Contracts;
- (d) the organizational documents, minute books, stock books, Tax Returns, books of account or other records having to do with the corporate organization of Seller, all employee-related or employee benefit-related files or records, and any other books and records which Seller is prohibited from disclosing or transferring to Buyer under applicable Law and is required by applicable Law to retain;
- (e) all Tax assets (including Tax refunds, prepayments and net operating losses) of Seller;
- (f) all personal property used by Seller in its business other than the Tangible Property;
- (g) any Claims of Seller's estate under chapter 5 of the Bankruptcy Code or analogous state statutes including Claims under section 547, 548, 549 or 550 of the Bankruptcy Code;

(h) all Employee Benefit Plans and all assets and Contracts associated with the Employee Benefits Plans;

(i) the rights which accrue or will accrue to Seller under this Agreement and the documents and instruments delivered in connection herewith;

(j) all pending litigation or proceedings and all rights, claims, counterclaims, offsets and causes of action asserted or which could be asserted, including, without limitation, as a defense to any of the proofs of claim filed in the Chapter 11 Cases;

(k) all intercompany payables and receivables, and all accounts payable and accounts or notes receivable, in each case, in connection with the Business and involving Seller, on the one hand, and one or more of Seller's Affiliates, on the other hand, outstanding as of the Closing Date;

(l) all equipment and property of any contractor or third party located on any of the Purchased Assets and not owned by Seller; and

(m) the assets, properties and rights set forth in Schedule 2.2(m).

Section 2.3 Assumed Liabilities. Subject to the terms and conditions set forth herein, Buyer shall assume, pay, satisfy, perform and discharge when due only the following liabilities and obligations of Seller with respect to the Purchased Assets and the Business (collectively, the "Assumed Liabilities"):

(a) all liabilities and obligations under the Assigned Contracts, Reclamation Obligations, Permits, Environmental Claims and Health and Safety Claims, whether arising prior to or on or after the Closing Date, including, without limitation, the Cure Amounts;

(b) all liabilities and obligations with respect to the Disclosed Litigation, excluding any expenses or costs (including legal costs and work-in-progress) accrued with respect to the defense of such Disclosed Litigation prior to the Closing Date;

(c) all liabilities and obligations for (i) Taxes relating to the Business, the Purchased Assets or the Assumed Liabilities for any taxable period or portion thereof following the Closing Date (and for this purpose, any Taxes for any Straddle Period shall be allocated between the portion of such Straddle Period ending on the Closing Date and the portion of such Straddle Period beginning after the Closing Date on an interim "closing of the books method", provided that any Taxes (such as property Taxes) that are not imposed on income, receipts or otherwise on a transactional basis shall be allocated on a daily basis, with "Straddle Period" meaning any taxable period beginning before and ending after the Closing Date), and (ii) Taxes for which Buyer is liable pursuant to Section 5.10;

(d) all liabilities and obligations arising on or after the Closing Date from or relating to any condition of the Purchased Assets or the Business, whether known or unknown or contingent;

(e) all liabilities and obligations related to the Existing Claims, including those obligations and liabilities related to the agreements underlying the Existing Claims; and

(f) all liabilities listed in Schedule 2.3(e).

Section 2.4 Excluded Liabilities. Other than the Assumed Liabilities and Permitted Encumbrances, Buyer shall not assume and shall not be responsible to pay, perform or discharge any debts, liabilities or obligations of Seller or with respect to the Purchased Assets or the Business,

whether known, unknown, direct, indirect, absolute, contingent or otherwise, or arising out of facts, circumstances or events in existence on or prior to Closing including the following (collectively, the “Excluded Liabilities”):

- (a) any liabilities or obligations relating to or arising out of the Excluded Assets;
- (b) all liabilities and obligations resulting from any (i) fine, (ii) penalty, (iii) claim for damages, (iv) health and safety violation, (v) regulatory order or (vi) breach of Law or Contract, in each case, due to Seller’s acts or omissions as the operator or manager of the Business;
- (c) any liabilities or obligations for Taxes: (i) relating to the Business, the Purchased Assets or the Assumed Liabilities for any taxable period or portion thereof ending on or prior to the Closing Date (and for this purpose, any Taxes for any Straddle Period shall be allocated in the same manner as Section 2.3(c)); and (ii) Taxes of Seller or an Affiliate of Seller not related to the Business;
- (d) any liabilities or obligations relating to or arising out of the broker fees disclosed in Section 3.11;
- (e) any liabilities or obligations relating to (i) any employees, or employment Contracts, of Seller or (ii) any Employee Benefit Plans; and
- (f) any liabilities and obligations of Seller set forth in Schedule 2.4(f).

Section 2.5 Exclusion of Assigned Contracts. From the date hereof until four (4) Business Days prior to the Sale Hearing (the “Cut-Off Date”), Buyer shall have the right, upon written notice to Seller, to exclude any Contract from the Assigned Contracts that is related solely to the Project, or supplement the list of Assigned Contracts to include any Contract that is related solely to the Project that should have been listed on Schedule 2.1(e) (in each case, subject to the requirements of sections 365(a) and 365(f) of the Bankruptcy Code), for any reason. Any Contract so excluded by Buyer shall be deemed to no longer be an Assigned Contract and shall be deemed an Excluded Asset. Any Schedules hereto shall be amended to reflect any changes made pursuant to this Section 2.5 and Buyer shall have no obligation to pay the Cure Amount (if any) associated with any Contract that is excluded from the Assigned Contracts pursuant to this Section 2.5.

Section 2.6 Non-Assignable Purchased Assets.

(a) To the extent that the sale, assignment, transfer, conveyance or delivery, or attempted sale, assignment, transfer, conveyance or delivery, to Buyer of any Purchased Asset would violate any Governmental Order which is in effect, result in a violation of applicable Law or would require the consent, authorization, approval or waiver of a Person who is not a party to this Agreement or an Affiliate of a party to this Agreement (including any Governmental Authority), and (i) such consent, authorization, approval or waiver has not been obtained, (ii) the Bankruptcy Court has not entered a final Governmental Order, which may include the Sale Order, providing that such consent, authorization, approval or waiver is not required or that the Purchased Asset subject to such consent, authorization, approval or waiver shall be assigned or transferred regardless of any such necessary consent, authorization, approval or waiver and that there shall be no breach or adverse effect on the rights of Buyer thereunder for the failure to obtain any such consent, authorization, approval or waiver or, (iii) in the case of Permits included in the Purchased Assets, where such consent, authorization, approval or waiver is not ordinarily obtained prior to the Closing, Seller shall not sell and this Agreement shall not constitute a sale, assignment, transfer, conveyance or delivery, or an attempted sale, assignment, transfer, conveyance or delivery thereof; provided, however, that, subject to the satisfaction or waiver of the conditions contained in ARTICLE 6, the Closing shall occur, notwithstanding the foregoing, without any adjustment to the Purchase Price on account thereof. Following the Closing, Seller and Buyer shall use commercially reasonable efforts, and shall

cooperate with each other, to obtain any such required consent, authorization, approval or waiver, or any release, substitution or amendment required to transfer all of the rights and benefits, and assign or novate all liabilities and obligations under any and all Assigned Contracts, Permits included in the Purchased Assets and other Purchased Assets and Assumed Liabilities, so that Buyer may have the benefit and rights of such Assigned Contracts and Permits and Purchased Assets and be responsible for such Assumed Liabilities from and after the Closing Date; provided, however, that neither Seller nor Buyer shall be required to pay any consideration therefor other than routine filing fees. Once such consent, authorization, approval, waiver, release, substitution or amendment is obtained, such applicable Purchased Assets shall be deemed to be transferred or, if required, Seller shall sell, assign, transfer, convey and deliver to Buyer the relevant Purchased Asset to which such consent, authorization, approval, waiver, release, substitution or amendment relates for no additional consideration. Applicable sales, transfer and other similar Taxes in connection with such sale, assignment, transfer, conveyance or license shall be paid by Buyer in accordance with Section 5.10.

(b) To the extent that any Purchased Asset or Assumed Liability cannot be transferred to Buyer following the Closing pursuant to Section 2.6(a), Buyer and Seller shall use commercially reasonable efforts (which shall not obligate Seller to pay any consideration in connection therewith) to enter into such arrangements (such as subleasing, sublicensing or subcontracting) to provide to the parties, to the extent permitted under applicable Law, operational equivalent of the transfer of such Purchased Asset or Assumed Liability to Buyer as of the Closing. To the extent permitted under applicable Law, Buyer shall, as agent or subcontractor for Seller, pay, perform and discharge fully the liabilities and obligations of Seller thereunder from and after the Closing Date and Seller shall, at Buyer's expense, hold in trust for and pay to Buyer promptly upon receipt thereof, such Purchased Asset and all benefits, income, proceeds and other monies received by Seller to the extent related to such Purchased Asset in connection with the arrangements under this Section 2.6(b). Seller shall be permitted to set off against such amounts all direct costs associated with the retention and maintenance of such Purchased Assets. Notwithstanding anything herein to the contrary, the provisions of this Section 2.6(b) shall not apply to any consent or approval required under any antitrust, competition or trade regulation Law, which consent or approval shall be governed by Section 5.5.

Section 2.7 Purchase Price.

(a) The aggregate consideration for the Purchased Assets (the "Purchase Price") shall consist of:

(i) cash in an amount equal to Twenty-Five Thousand Dollars (\$25,000) (the "Cash Amount"); *plus*

(ii) the assumption of the Assumed Liabilities.

(b) No later than three (3) Business Days prior to Closing, Seller shall deliver to Buyer a statement indicating wire transfer instructions for Seller. At the Closing, Buyer shall deliver to Seller by wire transfer an amount equal to the Cash Amount in accordance with such instructions in cash.

Section 2.8 Closing. Subject to the terms and conditions of this Agreement, the consummation of the transactions contemplated herein, including the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities (the "Closing"), shall take place electronically via email or facsimile beginning at 9:00 a.m., Mountain time, on the third (3rd) Business Day after the last of the conditions to Closing set forth in ARTICLE 6 have been satisfied or waived (other than conditions which, by their nature, are to be satisfied on the Closing Date) or at such other time or on such other date or at such other place as Seller and Buyer may mutually agree upon in writing (the day on which the Closing takes place being the "Closing Date").

Section 2.9 Transactions to Be Effected at the Closing. At the Closing:

(a) Seller shall deliver to Buyer the following, substantially in the applicable form attached hereto as Exhibit A with respect to the items listed in Section 2.9(a)(ii) through Section 2.9(a)(vi) below:

- (i) a true and correct copy of the Sale Order;
- (ii) duly executed deeds sufficient to transfer Seller's right, title and interest in, to and under all of the Purchased Assets that are Owned Mining Claims;
- (iii) duly executed assignments sufficient to transfer Seller's right, title and interest in, to and under all of the Purchased Assets that are Leased Real Property;
- (iv) duly executed deeds or assignments sufficient to transfer Seller's (or its Affiliate's) right, title and interest in, to and under all of the Purchased Assets that are Water Rights that may be transferred at Closing in accordance with applicable Law;
- (v) duly executed assignments and bills of sale sufficient to transfer Seller's right, title and interest in, to and under the Purchased Assets that are Tangible Property;
- (vi) a duly executed termination agreement sufficient to cancel all obligations relating to all Seller's right, title and interest in and under the MGC Option Agreement, including, but not limited to, cancelation of the 2% NSR royalty;
- (vii) duly executed assignments sufficient to transfer all of the Purchased Assets that are Assigned Contracts or Material Permits, in each case, that may be transferred at Closing in accordance with applicable Law; and
- (viii) all other agreements, documents, instruments or certificates required to be delivered by Seller at or prior to the Closing pursuant to Section 6.2.

(b) Buyer shall deliver to, or on behalf of (in the case of Section 2.9(b)(ii)), Seller the following:

- (i) the Cash Amount;
- (ii) the Cure Amounts required to be paid by Buyer in accordance with the terms hereof to the counterparties of the applicable Assigned Contracts;
- (iii) duly executed assumption agreements sufficient to assume the Assumed Liabilities substantially in the form attached as Exhibit B hereto; and
- (iv) all other agreements, documents, instruments or certificates required to be delivered by Buyer at or prior to the Closing pursuant to Section 6.3.

Section 2.10 Allocation of Purchase Price. Within thirty (30) days after the Closing Date, Buyer shall deliver to Seller a schedule allocating the Purchase Price and any other amounts required to be taken into account among the assets of Seller (the "Allocation Schedule"). The Allocation Schedule shall be prepared, and subsequently adjusted, in accordance with section 1060 of the Code. The Allocation Schedule shall be deemed final unless Seller notifies Buyer in writing that Seller objects to one or more items reflected in the Allocation Schedule within thirty (30) days after delivery of the Allocation Schedule to Seller. In the event of any such objection, Buyer and Seller will work expeditiously and in good faith in an attempt to resolve such dispute within a further period of fifteen (15) days after the date of notification by Seller to Buyer of such dispute, failing which the

dispute shall be submitted for determination to an independent national firm of certified public accountants mutually agreed to by Seller and Buyer (and, failing agreement between Seller and Buyer on the firm of certified public accountants within a further period of five (5) Business Days, such independent national firm of certified public accountants shall be Ernst & Young LLP). The determination of the firm of certified public accountants shall be final and binding upon the parties and shall not be subject to appeal. The firm of certified public accountants shall be deemed to be acting as experts and not as arbitrators. The fees and expenses of such accounting firm shall be borne equally by Seller, on the one hand, and Buyer, on the other. Seller and Buyer agree to (a) file their respective IRS Forms 8594 and all federal, state and local Tax Returns in a manner consistent with the Allocation Schedule (as it may be subsequently adjusted) and (b) notify and provide the other party with reasonable assistance in the event of an examination, audit or other proceeding relating to Taxes or any other filing with a Governmental Authority regarding the appropriate allocation of the Purchase Price among the Purchased Assets. Notwithstanding the preceding sentence, the parties may settle any proposed deficiency or adjustment by any Governmental Authority based upon or arising out of the allocation of the Purchase Price and other applicable items among the Purchased Assets, and neither Buyer nor Seller shall be required to litigate before any court any proposed deficiency or adjustment by any Governmental Authority challenging any final Allocation Schedule. Notwithstanding anything in this Agreement to the contrary, this Section 2.10 shall survive the Closing Date without limitation. Seller and Buyer acknowledge and agree that this Section 2.10 pertains to the allocation of the Purchase Price for Tax purposes, but not for any other purpose.

### **ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF SELLER**

Except as set forth in the Disclosure Schedules, Seller represents and warrants to Buyer as follows:

Section 3.1 Organization. Seller is a corporation duly organized, validly existing and in good standing under the Laws of the State of Nevada, is duly qualified to do business as a foreign corporation, and is in good standing under the Laws of each jurisdiction that requires such qualification as a consequence of the Business.

Section 3.2 Due Authorization, Execution and Delivery; Enforceability. Subject to the entry of the Sale Order by the Bankruptcy Court, Seller has the corporate power and authority to enter into this Agreement and the other agreements contemplated hereby, and to perform its obligations hereunder and thereunder and has taken all necessary action required for the due authorization, execution, delivery and performance by it of this Agreement and the transactions contemplated hereby. Subject to the entry of the Sale Order by the Bankruptcy Court, the execution and delivery by Seller of this Agreement, the performance by Seller of its obligations hereunder and the consummation by Seller of the transactions contemplated hereby have been duly authorized by all requisite corporate action. This Agreement has been duly executed and delivered by Seller and, subject to the entry of the Sale Order by the Bankruptcy Court, constitutes the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity).

Section 3.3 No Conflicts; Consents. Except as set forth in Schedule 3.3, subject to the Sale Order having been entered by the Bankruptcy Court, the execution, delivery and performance by Seller of this Agreement, and the consummation of the transactions contemplated hereby, do not and will not: (a) conflict with or result in a violation or breach of any provision of its organizational documents, (b) conflict with or result in a violation or breach of any Governmental Order applicable to Seller, or (c) require the consent of any Person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the acceleration of or create in any party the right to accelerate,

terminate, modify or cancel, any Material Contract. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority or other Person is required by or with respect to Seller in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, except (x) as set forth in Schedule 3.3, (y) entry of the Sale Order by the Bankruptcy Court, and (z) such consents, approvals, Permits, Governmental Orders, declarations, filings or notices which, in the aggregate, would not have a Material Adverse Effect.

Section 3.4 Assets.

(a) The following Schedules in this Section 3.4(a) are a true and complete list of the respective items indicated below, except where the failure to be a true and complete list would not result in a Material Adverse Effect:

(i) Schedule 2.1(b) sets forth the Leased Real Property held or used in connection with the Business.

(ii) Schedule 2.1(c) sets forth the Owned Mining Claims held or used in connection with the Business.

(iii) Schedule 2.1(d) sets forth the Water Rights held or used in connection with the Business.

(b) Seller (or its Affiliate, in the case of subsection (iii) below) owns an undivided interest in and to (i) the Leased Real Property set forth in Schedule 2.1(b), to which it has a valid and enforceable leasehold or subleasehold interest, (ii) subject to the paramount title of the United States, the Owned Mining Claims set forth in Schedule 2.1(c), to which it has good record title and (iii) the Water Rights set forth in Schedule 2.1(d), to which it has valid title or a valid leasehold interest, as applicable, in each case, free and clear of all Encumbrances except for Permitted Encumbrances and the Encumbrances listed on Schedule 3.4(b). The Purchased Assets represent all of the material assets and property used in carrying on the Business as it is currently conducted and constitute all assets that are necessary for the conduct of the Business in all material respects as it is currently conducted. Except for Buyer under this Agreement and as set forth in Schedule 3.3, no Person has any written or oral agreement, option, understanding or commitment, or any right or privilege capable of becoming such for the purchase or other acquisition from Seller or its Affiliates of any of the Purchased Assets, other than such rights that have been waived by such Person and other than with respect to Purchased Assets which are obsolete and which individually or in the aggregate do not exceed \$500,000. Except as indicated on Schedule 2.1(d), 2.1(e) and 3.7(b), all material assets, properties and rights used in the conduct of the Business are held solely by Seller, and all material Contracts, obligations, expenses and transactions relating to the Business have been entered into, incurred and conducted only by Seller.

(c) Seller has not sold, assigned, transferred or conveyed its interest in the Purchased Assets, or any right, title or interest therein, to any Person other than the sale to Buyer contemplated hereby, and Seller has not created or consented to any Encumbrance arising by, through or under Seller, other than Permitted Encumbrances.

(d) With respect to the Owned Mining Claims held or used in connection with the Business, all required claim maintenance fees have been paid in the manner required by Law in order to maintain the Owned Mining Claims in good standing through the end of the current assessment year (inclusive of the Closing Date), and proof thereof has been properly and timely recorded and filed in accordance with Law.

(e) Schedule 2.3(e) and Schedule 3.4(e) set forth a list of all royalties on or burdening all or any portion of the Leased Real Property, Owned Mining Claims, whether such

royalty is characterized as a net smelter return royalty, overriding royalty, net profit interest, gross proceeds royalty, production payment, streaming transaction, share of mineral production or otherwise.

(f) The Tangible Property that is material and used regularly in the conduct of the Business has been maintained in all material respects in the ordinary course consistent with standard industry practice, except where failure to so maintain would not result in a Material Adverse Effect.

(g) Except as indicated on Schedule 2.1(d), 2.1(e) and 3.7(b), no Affiliate of Seller owns or has any rights in or to any of the Purchased Assets or other properties or rights relating primarily to the Business.

Section 3.5 Material Contracts.

(a) Schedule 3.5(a) lists all of the Material Contracts. Schedule 3.5(a) also lists or describes all material written Contracts, arrangements, understandings or dealings, including with respect to the provision of any toll-processing or shared services, between Seller and an Affiliate or other non-arm's length party with respect to the Business or the Purchased Assets (it being acknowledged that these arrangements, understandings or dealings shall not be included in the Purchased Assets).

(b) Except as disclosed in Schedule 3.5(b), each Material Contract is a legal, valid, binding and enforceable agreement of Seller (or its Affiliate), and is in full force and effect and will continue to be in full force and effect immediately following the Closing Date.

(c) Schedule 3.5(c) sets forth Seller's estimate, based on reasonable inquiry, as of the date hereof, of the Cure Amounts associated with each Assigned Contract.

Section 3.6 Legal Proceedings. Except for the Disclosed Litigation, there are no actions, suits, claims or other legal proceedings pending, in each case before a Governmental Authority, or to Seller's Knowledge threatened, against Seller relating to the Business, which would reasonably be expected to be material and adverse to Seller in connection with its conduct of the Business or the Purchased Assets.

Section 3.7 Compliance with Laws; Permits.

(a) Except as disclosed in Schedule 3.7(a), Seller is in compliance with all Laws applicable to the Business, except where the failure to be in such compliance would not be expected to be material and adverse to Seller in connection with the conduct of the Business.

(b) Schedule 3.7(b) sets forth the material Permits necessary for the operation of the Business as presently being conducted (the "Material Permits"). Except as set forth on Schedule 3.7(b), the Material Permits have been duly obtained and Seller and its Affiliates are not in material default or material breach of any such Material Permit.

(c) None of the representations and warranties contained in this Section 3.7 shall relate to or be deemed to relate to environmental matters (which are governed exclusively by Section 3.8), tax matters (which are governed exclusively by Section 3.9) or Intellectual Property matters (which are governed exclusively by Section 3.10).

Section 3.8 Environmental and Health and Safety Matters.

(a) To Seller's Knowledge, except as set forth on Schedule 3.8(a), the Business and the Purchased Assets are in material compliance with all Environmental Laws and Health and

Safety Laws, except where the failure to be in such compliance would not be expected to be material and adverse to Seller or the conduct of the Business, and Seller has not received any Environmental Notice, Environmental Claim, Health and Safety Notice or Health and Safety Claim relating to the Business or the Purchased Assets, which either remains pending or unresolved, or is the source of ongoing obligations or requirements as of the Closing Date.

(b) Schedule 3.8(b) sets forth each of the material Environmental Permits necessary for the operation of the Business, each of which is in full force and effect. Seller has obtained and is in material compliance with all Environmental Permits listed in Schedule 3.8(b).

(c) To Seller's Knowledge, there has been no Release of Hazardous Materials in contravention of Environmental Laws or that would give rise to any material liability or response costs with respect to the Business or the Purchased Assets.

(d) Except as set forth on Schedule 3.8(d), Seller has not entered into, and the Purchased Assets are not otherwise subject to (i) any consent decree, order, judgment or judicial order relating to compliance with Environmental Laws or Environmental Permits or the investigation, sampling, monitoring, treatment, remediation, removal or cleanup of Hazardous Materials, and no litigation is pending with respect thereto, or (ii) any environmental indemnification in connection with any threatened or asserted claim by any third party for any liability under any Environmental Law or relating to any Hazardous Materials.

(e) Seller has not entered into, and the Purchased Assets are not otherwise subject to (i) any consent decree, administrative order, judgment or judicial order relating to compliance with Health and Safety Laws, or (ii) any indemnification in connection with any threatened or asserted claim by any third party for any liability under any Health and Safety Law.

#### Section 3.9 Taxes.

(a) Except as set forth in Schedule 3.9(a), (i) all Taxes due and owing by Seller with respect to the Purchased Assets have been duly and timely paid in full, (ii) no Tax deficiencies are being proposed in writing or have been assessed by any Governmental Authority with respect to the Purchased Assets that remain outstanding or unsatisfied, (iii) there are no Tax liens on any of the Purchased Assets for which Seller would be responsible, other than liens for Taxes not yet due and payable, (iv) no federal, state, local or foreign audits or administrative or judicial proceedings are presently pending, or threatened in writing, with regard to any Taxes or Tax Returns with respect to the Purchased Assets, and (v) all Tax Returns required to be filed by Seller have been filed, and all such Tax Returns are true and correct in all material respects.

(b) Seller is not a "foreign person" as that term is used in Treasury Regulations section 1.1445-2(b).

(c) Seller has not entered into an agreement with any Governmental Authority requiring it or its Affiliates to take action, or refrain from taking action, in order to secure Tax benefits not otherwise available.

(d) The representations and warranties set forth in this Section 3.9 are the exclusive representations and warranties made by Seller with respect to Taxes.

#### Section 3.10 Intellectual Property.

(a) Schedule 3.10(a) lists each patent or registration that has been issued to Seller with respect to any of its Intellectual Property, identifies each pending patent application or application for registration that Seller has made with respect to any of its Intellectual Property, and identifies each material Intellectual Property Contract. Except as would not have a Material Adverse

Effect, Seller owns or has the right to use all Intellectual Property used or held for use in connection with the Business. All required filings and fees related to Seller's Intellectual Property have been timely filed with and paid to the relevant Governmental Authorities.

(b) Except as set forth in Schedule 3.10(b), to Seller's Knowledge: (i) the conduct of the Business, as currently conducted, does not infringe, misappropriate, dilute or otherwise violate the Intellectual Property of any Person; and (ii) no Person is infringing, misappropriating or otherwise violating any Intellectual Property of Seller.

(c) The Intellectual Property and the Intellectual Property licensed under the Intellectual Property Contracts, in each case set forth on Schedule 2.1(h), is all of the Intellectual Property necessary to operate the Business as presently conducted.

(d) There are no actions, suits, claims or other legal proceedings pending, in each case before a Governmental Authority, or to Seller's Knowledge threatened: (i) alleging any infringement, misappropriation, dilution or violation of the Intellectual Property of any Person by Seller in connection with the Business or (ii) challenging the validity, enforceability, registrability or ownership of any of Seller's Intellectual Property.

(e) The representations and warranties set forth in this Section 3.10 are the exclusive representations and warranties made by Seller with respect to Intellectual Property.

Section 3.11 Financial Advisors. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Seller.

Section 3.12 Reclamation Bonds. Schedule 3.12 sets forth a description of all surety instruments, bonds, letters of credit, guarantees and other instruments or arrangements securing or guarantying performance of obligations with respect to the operation, closure, reclamation or remediation of the Purchased Assets (collectively, the "Reclamation Bonds"). Except as set forth on Schedule 3.12, no Governmental Authority has claimed any deficiency with respect to, or called on, any Reclamation Bond.

Section 3.13 No Other Representations and Warranties. Except for the representations and warranties contained in this ARTICLE 3 (including the related portions of the Disclosure Schedules), Seller has not and no Affiliate or Representative of Seller, or any other Person, has made or makes any other express or implied representation or warranty, either written or oral, on behalf of Seller, including any representation or warranty as to the accuracy or completeness of any information furnished or made available to Buyer and its Representatives (including any projections, information, documents or material made available to Buyer, management presentations or in any other form in expectation of the transactions contemplated hereby) or as to the future revenue, profitability or success of the Business or any representation or warranty arising from statute or otherwise in law.

#### **ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Seller as follows:

Section 4.1 Organization. Buyer is a corporation duly organized, validly existing and in good standing under the Laws of the State of Nevada.

Section 4.2 Due Authorization, Execution and Delivery; Enforceability. Buyer has the requisite corporate power and authority to enter into this Agreement, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery by Buyer of this Agreement, the performance by Buyer of its obligations hereunder and the

consummation by Buyer of the transactions contemplated hereby have been duly authorized by all requisite corporate action. This Agreement has been duly executed and delivered by Buyer and constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity).

Section 4.3 No Conflicts; Consents. The execution, delivery and performance by Buyer of this Agreement, and the consummation of the transactions contemplated hereby, do not and will not: (a) result in a violation or breach of any provision of the organizational documents of Buyer, or (b) result in a violation or breach of any provision of any Law or Governmental Order applicable to Buyer. No consent, approval, Permit, Governmental Order (other than in connection with the Chapter 11 Cases), declaration or filing with, or notice to, any Governmental Authority or other Person is required by or with respect to Buyer in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

Section 4.4 Financial Advisors. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Buyer.

Section 4.5 Sufficiency of Funds. Buyer has sufficient cash on hand or other sources of immediately available funds to enable it to make payment of the Cash Amount and consummate the transactions contemplated by this Agreement.

Section 4.6 Solvency. Immediately after giving effect to the transactions contemplated hereby, Buyer shall be solvent and shall: (a) be able to pay its debts as they become due, (b) own property that has a fair saleable value greater than the amounts required to pay its debts (including a reasonable estimate of the amount of all contingent liabilities), and (c) have adequate capital to carry on its business. No transfer of property is being made and no obligation is being incurred in connection with the transactions contemplated hereby with the intent to hinder, delay or defraud either present or future creditors of Buyer or Seller. In connection with the transactions contemplated hereby, Buyer has not incurred, nor plans to incur, debts beyond its ability to pay as they become absolute and matured.

Section 4.7 Legal Proceedings. There are no actions, suits, claims or other legal proceedings pending against or by Buyer or any Affiliate of Buyer that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement.

Section 4.8 Independent Investigation. Buyer has conducted its own independent investigation, review and analysis of the Business and the Purchased Assets. Buyer acknowledges and agrees that: (a) in making its decision to enter into this Agreement and to consummate the transactions contemplated hereby, Buyer has relied upon its own investigation and the express representations and warranties of Seller set forth in ARTICLE 3 (including the related portions of the Disclosure Schedules), and (b) none of Seller, any Affiliate or Representative of Seller or any other Person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of Seller.

## **ARTICLE 5 COVENANTS**

Section 5.1 Conduct of Business Prior to the Closing. From the date hereof until the Closing:

- (a) Seller shall use its commercially reasonable efforts to:

(i) maintain and preserve intact the current organization, business and franchise of the Business and to preserve the rights, franchises, goodwill and relationships of the customers, lenders, suppliers, regulators and others having business relationships with the Business;

(ii) pay all Taxes when due with respect to the Purchased Assets required to be paid by Seller and not allow the Purchased Assets to become subject to a lien for Taxes required to be paid by Seller, other than for Taxes not yet due and payable; and

(b) except (i) as expressly required or permitted by this Agreement, (ii) as required pursuant to applicable Laws, (iii) as set forth in Schedule 5.1, (iv) as consented to in writing by Buyer (which consent shall not be unreasonably withheld, conditioned or delayed), or (v) as required to respond reasonably and prudently to an emergency or disaster (including the right to take forthwith any action required to insure the safety and integrity of the Business), Seller shall not:

(i) acquire any business, other than acquisitions with a purchase price that does not exceed \$250,000 individually or \$1,000,000 in the aggregate;

(ii) sell, transfer, dispose of, lease, encumber, relinquish or abandon any of the Purchased Assets, except (A) with respect to Tangible Property, sales and other dispositions in the ordinary course of business or (B) sales, transfers or dispositions of Tangible Property that do not exceed \$250,000 in the aggregate (excluding those sales described in clause (A));

(iii) enter into any Contract that would reasonably be likely to become an Assigned Contract;

(iv) incur any indebtedness for borrowed money that will constitute an Assumed Liability other than short-term indebtedness, letters of credit or sureties in the ordinary course of business;

(v) make any loans or advances that will be a Purchased Asset to any Person or assume or guarantee the liabilities of any Person that will constitute an Assumed Liability other than in the ordinary course of business;

(vi) settle, offer or propose to settle, compromise, assign or release any material proceeding brought against Seller in respect of or in connection with the Business or the Purchased Assets;

(vii) enter into any agreement creating a joint venture or partnership or effecting a business combination or other similar arrangement with another Person in respect of the Business or the Purchased Assets;

(viii) amend or modify in any material respect, or terminate, the Reclamation Bonds; and

(ix) attempt or agree to do any of the foregoing matters listed in clauses (i) through (viii) above.

Section 5.2 Access to Information. From the date hereof until the Closing, Seller shall: (a) afford Buyer and its Representatives reasonable access to and the right to inspect all of the properties, assets, premises, Books and Records, Contracts and other documents and data related to the Business or the Purchased Assets, (b) furnish Buyer and its Representatives with such financial, operating and other data and information related to the Business or the Purchased Assets as Buyer or any of its Representatives may reasonably request, and (c) instruct the Representatives of Seller to cooperate with Buyer in its investigation of the Purchased Assets and the Business; provided, however, that any such investigation shall be conducted at Buyer's sole risk and at Buyer's sole cost

and expense during normal business hours upon reasonable advance notice to Seller, under the supervision of Seller's personnel, in compliance with all of Seller's health, safety and environmental regulations and procedures, and in such a manner as not to interfere with the normal operations of the Business. Notwithstanding anything to the contrary in this Agreement, Seller shall not be required to disclose any information to Buyer if such disclosure would, in Seller's discretion: (x) cause significant competitive harm to Seller and/or the Business if the transactions contemplated by this Agreement are not consummated, (y) jeopardize any attorney-client or other privilege, or (z) contravene any applicable Law, fiduciary duty or binding agreement entered into prior to the date of this Agreement. Prior to the Closing, without the prior written consent of Seller, Buyer shall not contact any suppliers to, or customers of, the Business, and Buyer shall have no right to perform invasive or subsurface investigations of any properties. Buyer shall, and shall cause its Representatives to, abide by the terms of the Confidentiality Agreement with respect to any access or information provided pursuant to this Section 5.2 (as if Buyer were the "Receiving Party" named therein and Seller were the "Disclosing Party" named therein).

Section 5.3 Notice of Certain Events. Seller and Buyer agree that, subject to applicable Law, each shall provide the other prompt notice in writing of:

- (a) any notice or 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;
- (b) any material notice or communication from any Governmental Authority in connection with the transactions contemplated by this Agreement;
- (c) any material proceeding commenced or threatened against it which relates to the consummation of the transactions contemplated by this Agreement, other than the Chapter 11 Cases;
- (d) any failure by it to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied under this Agreement; and
- (e) and copies of all documents related thereto, provided that the giving of any such notice shall not in any way change or modify the representations and warranties of the parties or the conditions in their favor contained in this Agreement or otherwise affect the remedies available to Seller and Buyer under this Agreement.

Section 5.4 Confidentiality. Buyer acknowledges and agrees that, until the earlier of the Closing and December 31, 2017, Buyer (a) shall be bound by the terms of the Confidentiality Agreement (as if Buyer were the "Receiving Party" named therein and Seller were the "Disclosing Party" named therein), and, in addition, (b) covenants and agrees to keep confidential, in accordance with the provisions of the Confidentiality Agreement (as if Buyer were the "Receiving Party" named therein and Seller were the "Disclosing Party" named therein), information provided to Buyer pursuant to this Agreement. If this Agreement is, for any reason, terminated prior to the Closing, the Confidentiality Agreement and the provisions of this Section 5.4 shall nonetheless continue in full force and effect until December 31, 2017 (as if Buyer were the "Receiving Party" named therein and Seller were the "Disclosing Party" named therein). Notwithstanding the foregoing provisions of this Section 5.4, the parties hereto agree and acknowledge that (a) this Agreement and any and all schedules, exhibits and other ancillary documents may be disclosed to third parties and filed with the Bankruptcy Court in connection with the Chapter 11 Cases and Seller's efforts to obtain entry of the Sale Order by the Bankruptcy Court and (b) such provisions shall not be construed to prohibit or restrict any party hereto or its Affiliates from making disclosures required by, or in connection with, applicable Laws or stock exchange requirements, rules or regulations.

Section 5.5 Governmental Approvals and Other Third-Party Consents.

(a) Each party hereto shall, as promptly as possible, use commercially reasonable efforts to obtain, or cause to be obtained, all consents, authorizations, orders and approvals from all Governmental Authorities that may be or become necessary for its execution and delivery of this Agreement and the performance of its obligations pursuant to this Agreement, except for consents, authorizations, orders and approvals with respect to Permits that cannot be obtained until after the Closing. Each party shall reasonably cooperate with the other party and its Affiliates in promptly seeking to obtain all such consents, authorizations, orders and approvals. The parties hereto shall not willfully take any action that will have the effect of delaying, impairing or impeding the receipt of any required consents, authorizations, orders and approvals.

(b) With respect to the Permits, Buyer will meet with the relevant state and federal agencies with respect to the modification, transfer, replacement or reissuance, as applicable, of such Permits, which shall occur following Closing. Each party shall use commercially reasonable efforts to cause the modification, transfer, replacement or reissuance, as applicable, of the Permits promptly following Closing, provided that Seller shall not be obligated to pay any consideration in connection therewith and/or to incur any third party expenses or reimbursement obligations to Buyer in doing so. Following the Closing, Seller shall, to the extent permitted by Law, maintain each Permit (each a "Transition Permit") in full force and effect until each such Permit has been modified, transferred, replaced or reissued, as applicable, and Seller shall allow Buyer to own, use, develop and operate the Purchased Assets under each such Transition Permit until such time as each such Transition Permit has been modified, transferred, replaced or reissued, as applicable, provided that Seller shall not be obligated to pay any consideration in connection therewith and/or to incur any third party expenses or reimbursement obligations to Buyer in doing so. Following the Closing, if Seller receives a notice of violation or of any other Loss under any Transition Permit prior to the transfer or reissuance of such Transition Permit, which is based on or arises out of the activities or operations of Buyer after Closing, Seller will promptly notify Buyer, and Buyer shall be responsible for contesting or curing such violation and for any Loss, obligation or liability associated therewith. Buyer shall indemnify Seller for any obligations or liabilities associated with any such notice of violation of a Transition Permit or Loss related thereto following Closing.

(c) Seller and Buyer shall use commercially reasonable efforts to give all notices to, and obtain all consents or waivers from, all third parties that are described in Schedule 3.3; provided, however, that (i) the foregoing shall not require Seller or Buyer to give notices to, or obtain consents or waivers from, any non-debtor parties to Material Contracts regarding assignments thereof to Buyer and (ii) neither Seller nor Buyer shall be obligated to pay any consideration therefor to any third party from whom consent or approval is requested, other than customary filing fees.

Section 5.6 Books and Records.

(a) In order to facilitate the resolution of any claims made against or incurred by Seller prior to the Closing, or for any other reasonable purpose, for a period of seven (7) years after the Closing, Buyer shall: (i) retain the Books and Records (including personnel files) of the Business relating to periods prior to the Closing in accordance with Buyer's document retention policies, and (ii) upon reasonable notice, afford the Representatives of Seller reasonable access (including the right to make, at Seller's expense, photocopies), during normal business hours, to those portions, and only those portions, of such Books and Records as relate to the Purchased Assets prior to Closing and, if required by Buyer, subject to Seller executing a non-disclosure agreement with respect to such information, in form and substance acceptable to the parties, acting reasonably.

(b) Buyer shall not be obligated to provide Seller with access to any books or records (including personnel files) pursuant to this Section 5.6 where such access would violate any Law.

Section 5.7 Closing Conditions. From the date hereof until the Closing, each party hereto shall use commercially reasonable efforts to take such actions as are necessary to expeditiously satisfy the closing conditions set forth in ARTICLE 6 for which it is responsible.

Section 5.8 Public Announcements. Seller and Buyer shall consult with each other prior to issuing any press releases or otherwise making public statements with respect to this Agreement or the transactions contemplated by this Agreement and, to the extent practicable, shall provide the other parties with an opportunity to review and comment on all such press releases or statements prior to the release thereof. To the extent that any such press release or public statement is required by applicable Law, by a rule of a stock exchange on which a party's shares (or those of any of its Affiliates) are listed or traded or by a Governmental Authority, the press release or public announcement shall, to the extent practicable, be issued or made after consultation with the other parties and taking into account the other parties' comments, provided that such consultation does not, and reasonably would be expected not to, cause non-compliance with any such Law or rule. If such advance consultation is not reasonably practicable or legally permitted, to the extent permitted by applicable Law, the disclosing party shall provide the other parties with a copy of any written disclosure made by such disclosing party as soon as practicable thereafter.

Section 5.9 Further Assurances. Following the Closing, each of the parties hereto shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to vest title to the Purchased Assets in Buyer, carry out the provisions hereof and give effect to the transactions contemplated by this Agreement, in each case, at the sole cost and expense of the requesting party. Without limiting the generality of the foregoing, during the thirty (30) day period following the Closing, Buyer shall afford the Representatives of Seller reasonable access, during normal business hours, to Buyer's property for the purpose of recovering and/or removing any of the Excluded Assets remaining on such property.

Section 5.10 Transfer Taxes. All transfer, documentary, sales, use, stamp, registration, value added and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement (including any real property transfer Tax and any other similar Tax) (all such Taxes collectively, "Transfer Taxes") shall be borne and paid by Buyer when due. Buyer shall, at its own expense, timely file any Tax Return with respect to Transfer Taxes (and Seller shall cooperate with respect thereto as necessary). Each of Buyer and Seller agrees to timely sign and deliver (or to cause to be timely signed and delivered) such certificates or forms as may be necessary or appropriate and otherwise to cooperate to establish any available exemption from (or otherwise reduce) any Transfer Taxes.

Section 5.11 Replacement of Reclamation Bonds. After Closing, Buyer shall obtain, as promptly as practicable, replacements for Sellers' Reclamation Bonds in the name of Buyer or its Affiliates as are necessary to permit the cancellation of Sellers' Reclamation Bonds and the associated indemnity agreements, and the full and unconditional release of any security provided in connection therewith. Buyer shall file the applications for such replacement Reclamation Bonds with the appropriate Governmental Authorities within three (3) Business Days of the Closing Date and shall indemnify, defend, protect and hold harmless each Seller and its Affiliates from and against all Losses incurred by Seller and its Affiliates related to the Reclamation Bonds and/or the associated indemnity agreements, to the extent relating to events occurring subsequent to the Closing.

Section 5.12 Financing. Buyer covenants and agrees that it shall ensure and take all necessary steps to ensure that at Closing it will have sufficient funds on hand to pay the Cash Amount to Seller in full in cash.

Section 5.13 Nature of Transaction. Seller is selling, and Buyer is acquiring, the Purchased Assets "as is", "where is" and with all faults, limitations and defects (hidden and apparent) and subject only to the representations and warranties contained in ARTICLE 3, without any other

representation or warranty of any nature whatsoever and without any guarantee or warranty (whether express or implied) as to their title, quality, merchantability or their fitness for Buyer's intended use or a particular purpose or any use or purpose whatsoever. Further, except as set forth in this Agreement, neither Seller nor any director, officer, manager, employee, agent, consultant, or Representative of Seller has made any warranties, representations or guarantees, express, implied or statutory, written or oral, respecting the Purchased Assets, any part of the Purchased Assets, the financial performance of the Purchased Assets, or the physical condition of the Purchased Assets. Buyer 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. Buyer 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. Buyer and Seller further acknowledge that the consideration for the Purchased Assets specified in this Agreement has been agreed upon by Seller and Buyer after good-faith arms'-length negotiation. Buyer has relied, and shall rely, solely upon its own investigation of all such matters and the representations, warranties and covenants contained in ARTICLE 3. Following the Closing, each of the parties hereto hereby agrees and acknowledges that (a) the parties hereto hereby disclaim all Losses and responsibility for any representation or warranty (including any representation or warranty set forth in ARTICLE 3 or ARTICLE 4 or any express or implied warranty, any warranty as to accuracy or completeness or any warranty as to fitness for a particular purposes), omission, agreement, projection, forecast, statement, or information made, communicated, or furnished (orally or in writing) to any other party hereto or its Affiliates or Representatives (including any opinion, information, projection, or advice that may have been or may be provided, directly or indirectly (including on or by access to any online data room), to any other party hereto or its Affiliates or Representatives by any director, officer, manager, employee, agent, consultant, or Representative of such party); (b) Seller makes no representations or warranties to Buyer regarding the probable success, profitability or value of any of the Purchased Assets; and (c) no party hereto shall have any liability with respect to, and no party hereto shall be permitted nor shall it assert any indemnification claim, liability or Loss with respect to, the foregoing matters, whether pursuant to this Agreement, common law, or otherwise.

Section 5.14 Supplements to Schedules. Prior to the Cut-Off Date, Seller shall have the right from time to time to supplement, modify or update the Disclosure Schedules upon written notice to Buyer. Upon receipt of any such supplement, modification or update that in the reasonable judgment of Buyer would cause the condition set forth in Section 6.2(a) to not be satisfied at the Closing, Buyer shall have ten (10) Business Days from the date of receipt to object to such supplement, modification or update and, in the event of such an objection, the Disclosure Schedules shall not be deemed to have been supplemented, modified or updated with respect to such objected to item; provided, however, that if Buyer fails to so object within the ten (10)-Business Day period or accepts any portion of the supplement, modification or update, such supplement, modification or update (or portion with respect to which Buyer does not object) shall be deemed to supplement, modify or update the Disclosure Schedules and Seller shall not be deemed to have breached or violated any of its respective representations, warranties, covenants or agreements in this Agreement with respect thereto.

Section 5.15 Bankruptcy Matters.

(a) Procedures. Seller intends to seek entry of the Sale Order without an auction or other competitive bidding process and shall take reasonable steps to obtain entry of the Sale Order as soon as reasonably practicable. The Parties intend that approval of this Agreement and entry of the Sale Order by the Bankruptcy Court be sought by motion under section 363 of the Bankruptcy Code.

(b) Compliance.

(i) Seller shall comply with all of its obligations under the Sale Order (after the entry of such Sale Order by the Bankruptcy Court).

(ii) Seller shall use efforts to comply with all requirements under the Bankruptcy Code and Bankruptcy Rules in connection with obtaining approval of the transactions contemplated by this Agreement.

(iii) Seller shall move to assume and assign to Buyer the Assigned Contracts that are executory contracts capable of being assumed pursuant to section 365 of the Bankruptcy Code and shall provide notice thereof to (A) all counterparties to such contracts, (B) any third party beneficiary to such contracts as requested by Buyer (which third party beneficiaries shall be identified by Seller using its best efforts), (C) any other Person that Buyer requests, and (D) any other Person as may be required by applicable Bankruptcy Rules and any applicable local rules of the Bankruptcy Court and any other Person requested by Buyer. Seller has the right to reject any Contract that is not an Assigned Contract in accordance with the Bankruptcy Code.

(c) Environmental Matters. Nothing in the Sale Order or this Agreement releases, discharges, nullifies, precludes, or enjoins the enforcement of any environmental liability to any Governmental Authority that any Person would be subject to as the owner or operator of the Purchased Assets after the Closing Date. Nothing in the Sale Order shall authorize the transfer or assignment to Buyer of any governmental (i) license, (ii) permit, (iii) registration, (iv) authorization or (v) approval, or the discontinuation of any obligation thereunder, without compliance with all applicable legal requirements under non-bankruptcy Law governing such transfers or assignments. Notwithstanding the foregoing sentence, nothing in the Sale Order shall: (A) be interpreted to deem Buyer as the successor to the Debtors under any successor liability doctrine with respect to any liabilities under environmental statutes or regulations for penalties for days of violation prior to the Closing Date or for liabilities relating to off-site disposal of waste by the Debtors prior to the Closing Date; (B) create for any Governmental Authority any substantive right that does not already exist under Law; or (C) be deemed or construed to be an admission of liability by the Debtors. Nothing in the Sale Order shall be construed to guarantee that any Water Right is in good standing or otherwise bind the State of Nevada Division of Water Resources and the Nevada State Engineer to any interpretation of the terms and conditions of any Water Right which conflict with the official records maintained by the State of Nevada Division of Water Resources with respect to each Water Right permit.

(d) Sale Order. This Agreement and the transactions contemplated hereby are contingent upon and subject to approval of the Bankruptcy Court through the entry of a Sale Order. The Sale Order will provide, among other things, that pursuant to sections 105, 363 and 365 of the Bankruptcy Code:

(i) the Purchased Assets shall be sold to Buyer free and clear of all Encumbrances (except for Permitted Encumbrances and Assumed Liabilities);

(ii) to the extent that (A) there are restrictions on the sale, assignment, transfer, conveyance or delivery, or attempted sale, assignment, transfer, conveyance or delivery, to Buyer of any Purchased Asset or (B) the same would require the consent, authorization, approval or waiver of a Person who is not a party to this Agreement or an Affiliate of a party to this Agreement (including any Governmental Authority), then (1) such consent, authorization, approval or waiver is not required and/or (2) the Purchased Asset subject to such consent, authorization, approval or waiver shall be assigned or transferred regardless of any such restriction or necessary consent, authorization, approval or waiver and that there shall be no breach or adverse effect on the rights of Seller or Buyer for the failure to obtain any such consent, authorization, approval or waiver or otherwise comply with such restriction;

(iii) the transactions contemplated by this Agreement were negotiated at arm's length, that Buyer acted in good faith in all respects and Buyer shall be found to be a "good faith" purchaser within the meaning of section 363(m) of the Bankruptcy Code;

(iv) the terms and conditions of the sale of the Purchased Assets to Buyer as set forth herein are approved;

(v) Seller is authorized and directed to consummate the transactions contemplated by this Agreement and to comply in all respects with the terms of this Agreement;

(vi) Buyer and Seller did not engage in any conduct that would allow the transactions contemplated by this Agreement to be set aside pursuant to section 363(m) of the Bankruptcy Code; and

(vii) the Sale Order is binding upon any successors to Seller, including any trustees in respect of Seller or the Purchased Assets in the case of any proceeding under chapter 7 of the Bankruptcy Code.

(e) If the Sale Order is appealed, Buyer and Seller shall use their respective commercially reasonable efforts to defend such appeal at their own cost and expense.

(f) Seller further covenants and agrees that the terms of any plan of reorganization or liquidation, or any order of dismissal, submitted to the Bankruptcy Court by Seller shall not conflict with, supersede, abrogate, nullify or restrict the terms of this Agreement, or in any way prevent or interfere with the consummation or performance of the transactions contemplated by this Agreement.

## **ARTICLE 6 CONDITIONS TO CLOSING**

Section 6.1 Conditions to Obligations of All Parties. The obligations of Seller and Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of the following condition: no Governmental Authority shall have issued a Governmental Order restraining or enjoining the transactions contemplated by this Agreement or causing the transactions contemplated by this Agreement to be rescinded following completion thereof and there shall not have been enacted or made applicable any Law that makes the transactions contemplated by this Agreement illegal or otherwise prohibited.

The foregoing condition is for the exclusive benefit of Seller and Buyer and any such condition may be waived in whole or in part by Seller and Buyer at or prior to the time of Closing by each delivering to the other a written waiver to that effect. Delivery of any such waiver shall be without prejudice to any rights and remedies at law and in equity Seller or Buyer may have, including any claims Seller or Buyer may have for breach of covenant, representation or warranty by the other party, and also without prejudice to Seller's and Buyer's rights of termination in the event of non-performance of any other conditions in whole or in part.

Section 6.2 Conditions to Obligations of Buyer. The obligations of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Buyer's waiver, at or prior to the Closing, of each of the following conditions:

(a) The representations and warranties of Seller contained in ARTICLE 3 shall be true and correct in all respects without giving effect to any limitation indicated by the words "Material Adverse Effect", "in all material respects", "material", "materially" or like words or expressions, except where the failure of such representations and warranties to be true and correct does not in aggregate result in a Material Adverse Effect, as of the Closing Date as if made on and as of such date (except to the extent such representations and warranties speak as of an earlier date, then as of such date, or except as affected by transactions contemplated or permitted by this Agreement) and Seller shall have delivered to Buyer a certificate dated the Closing Date executed by a senior officer to the foregoing effect with respect to Seller's representations and warranties.

(b) Seller shall have duly performed and complied in all material respects with all material agreements, covenants and conditions required by this Agreement to be performed or complied with by it prior to or on the Closing Date and Seller shall have delivered to Buyer a certificate dated the Closing Date executed by a senior officer to the foregoing effect with respect to Seller's agreements, covenants and conditions.

(c) Buyer shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Seller certifying that attached thereto are true and complete copies of the constituent documents of Seller, all resolutions adopted by the board of directors of Seller authorizing the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby.

(d) Buyer shall have received a certificate of good standing for Seller from the Secretary of State of the State of Nevada.

(e) Buyer shall have received a certificate pursuant to Treasury Regulations section 1.1445-2(b) (the "FIRPTA Certificate") that Seller is not a foreign person within the meaning of section 1445 of the Code duly executed by Seller.

(f) Seller shall have delivered to Buyer duly executed counterparts of each other document, certificate and instrument set forth in Section 2.9(a) to be executed and delivered by Seller.

(g) The Bankruptcy Court shall have entered the Sale Order, which shall be in form and substance acceptable to Buyer in its sole and absolute discretion, and, as of the Closing Date the Sale Order shall be in full force and effect and shall not have been reversed, vacated, or stayed, and shall not have been amended, supplemented, or otherwise modified in any material respect without the prior written consent of Buyer.

(h) The Sale Order shall be non-appealable and not otherwise subject to review, reversal, modification or amendment, by appeal or writ of certiorari. Notwithstanding anything herein to the contrary, the parties may, in their sole and absolute discretion, complete the transactions contemplated by this Agreement prior to the Sale Order becoming a final non-appealable order of the Bankruptcy Court, *but only* to the extent the Sale Order provides that Buyer is a "Good Faith Purchaser" pursuant to section 363(m) of the Bankruptcy Code and is entitled to all of the protections afforded to such purchasers by that section of the Bankruptcy Code.

(i) The Assigned Contracts shall have been assumed by Seller, as applicable, and assigned to Buyer pursuant to sections 365(a) and 365(f) of the Bankruptcy Code.

The foregoing conditions are for the exclusive benefit of Buyer and any such condition may be waived in whole or in part by Buyer at or prior to the time of Closing by delivering to Seller a written waiver to that effect executed by Buyer. Delivery of any such waiver shall be without prejudice to any rights and remedies at law and in equity Buyer may have, including any claims Buyer may have for breach of covenant, representation or warranty by Seller, and also without prejudice to Buyer's rights of termination in the event of non-performance of any other conditions in whole or in part.

Section 6.3 Conditions to Obligations of Seller. The obligations of Seller to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Seller's waiver, at or prior to the Closing, of each of the following conditions:

(a) The representations and warranties of Buyer contained in ARTICLE 4 shall be true and correct in all material respects as of the Closing Date as if made on and as of such date (except to the extent such representations and warranties speak as of an earlier date, then as of such

date) and Buyer shall have delivered to Seller a certificate dated the Closing Date executed by a senior officer to the foregoing effect with respect to Buyer's representations and warranties.

(b) Buyer shall have duly performed and complied in all material respects with all material agreements, covenants and conditions required by this Agreement to be performed or complied with by Buyer prior to or on the Closing Date and Buyer shall have delivered to Seller a certificate dated the Closing Date executed by a senior officer to the foregoing effect with respect to its agreements, covenants and conditions.

(c) Seller shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Buyer certifying that attached thereto are true and complete copies of the constituent documents of Buyer, all resolutions adopted by the board of directors of Buyer authorizing the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby.

(d) Seller shall have received a certificate of good standing for Buyer from the Secretary of State of Buyer's jurisdiction of incorporation or organization, as applicable.

(e) Buyer shall have delivered to Seller the Cash Amount in accordance with Section 2.7(b).

(f) Buyer shall have delivered to Seller duly executed counterparts of each other document, certificate and instrument set forth in Section 2.9(b) to be executed and delivered by Buyer.

(g) Buyer shall have delivered to Seller evidence reasonably satisfactory to Seller that Buyer has satisfied the covenants set forth in Section 5.11.

(h) The Bankruptcy Court shall have entered the Sale Order, which shall be in form and substance acceptable to Seller, and no Governmental Order staying, reversing, modifying or amending the Sale Order shall be in effect on the Closing Date.

(i) The Sale Order shall be non-appealable and not otherwise subject to review, reversal, modification or amendment, by appeal or writ of certiorari. Notwithstanding anything herein to the contrary, the parties may, in their sole and absolute discretion, complete the transactions contemplated by this Agreement prior to the Sale Order becoming a final non-appealable order of the Bankruptcy Court, *but only* to the extent the Sale Order provides that Buyer is a "Good Faith Purchaser" pursuant to section 363(m) of the Bankruptcy Code and is entitled to all of the protections afforded to such purchasers by that section of the Bankruptcy Code.

The foregoing conditions are for the exclusive benefit of Seller and any such condition may be waived in whole or in part by Seller at or prior to the time of Closing by delivering to Buyer a written waiver to that effect executed by Seller. Delivery of any such waiver shall be without prejudice to any rights and remedies at law and in equity Seller may have, including any claims Seller may have for breach of covenant, representation or warranty by Buyer, and also without prejudice to Seller's rights of termination in the event of non-performance of any other conditions in whole or in part.

## **ARTICLE 7 TERMINATION**

Section 7.1 Termination by the Parties. This Agreement may be terminated at any time prior to the Closing:

- (a) by the mutual written consent of Seller and Buyer;

(b) by Buyer by written notice to Seller if:

(i) the Closing has not occurred on or prior to June 30, 2017 (the “Drop Dead Date”), except that the right to terminate this Agreement under this Section 7.1(b)(i) shall not be available to Buyer if Buyer’s failure to fulfill any of Buyer’s covenants or obligations or if the breach of any of Buyer’s representations and warranties under this Agreement, as applicable, has been the cause of, or resulted in, the failure of the Closing to occur by the Drop Dead Date;

(ii) any of the conditions set forth in Section 6.1 or Section 6.2 shall not have been satisfied or waived by the Drop Dead Date or is incapable of satisfaction by the Drop Dead Date, provided that Buyer is not then in breach of this Agreement so as to cause any of the conditions in Section 6.1 or Section 6.2 not to be satisfied;

(iii) the Sale Order, once entered, is changed in a manner that is materially adverse to Buyer without the consent of Buyer in its reasonable discretion; or

(iv) Seller seeks to have the Bankruptcy Court enter an order dismissing the Chapter 11 Case of Seller or converting it to a case under chapter 7 of the Bankruptcy Code, or if the Bankruptcy Court enters an order dismissing the Chapter 11 Case of Seller or converting the Chapter 11 Case of Seller to a case under chapter 7 of the Bankruptcy Code, or appoints a trustee in Seller’s Chapter 11 Case or an examiner with enlarged powers relating to the operation of Seller’s businesses, and such dismissal, conversion or appointment is not reversed or vacated within three (3) Business Days after the entry thereof; or

(c) by Seller by written notice to Buyer if:

(i) the Closing has not occurred on or prior to the Drop Dead Date, except that the right to terminate this Agreement under this Section 7.1(c)(i) shall not be available to Seller if the failure of Seller to fulfill any of its covenants or obligations or if the breach of any of its representations and warranties under this Agreement has been the cause of, or resulted in, the failure of the Closing to occur by the Drop Dead Date;

(ii) any of the conditions set forth in Section 6.1 or Section 6.3 shall not have been satisfied or waived by the Drop Dead Date or is incapable of satisfaction by the Drop Dead Date, provided that Seller is not then in breach of this Agreement so as to cause any of the conditions in Section 6.1 or Section 6.3 not to be satisfied;

(iii) the board of directors of Seller shall have determined in good faith, after considering applicable Law and consulting with outside counsel, that such termination is required by its fiduciary obligations under applicable Law; or

(iv) Seller consummates a sale or transfer of all or a material portion of the Purchased Assets to a third party whose bid was (A) selected by the Debtors as a higher and better bid through the approved sale and auction process pursuant to the Bid Procedures Order and (B) approved by the Bankruptcy Court;

(d) by Buyer or Seller in the event that:

(i) any Governmental Authority shall have issued a Governmental Order restraining or enjoining the transactions contemplated by this Agreement or causing the transactions contemplated by this Agreement to be rescinded following completion thereof, and such Governmental Order shall have become permanent, final and non-appealable;

(ii) there shall be enacted or made applicable any Law that makes the transactions contemplated by this Agreement illegal or otherwise prohibited; or

(iii) a court issues a final non-appealable order that prevents Seller from selling the Purchased Assets to Buyer.

Section 7.2 Effect of Termination.

(a) In the event of the termination of this Agreement pursuant to Section 7.1(a) or Section 7.1(d), except as provided in Section 7.2(b), this Agreement shall forthwith become void and there shall be no liability on the part of any party hereto.

(b) Notwithstanding any other provisions of this Agreement, if this Agreement is terminated (whether by a party or automatically or otherwise), the provisions of Section 5.4, ARTICLE 6 and this Section 7.2 (subject to any time limitations referred to therein) shall survive such termination and remain in full force and effect, along with any other provisions of this Agreement which expressly or by their nature survive the termination hereof.

**ARTICLE 8  
MISCELLANEOUS**

Section 8.1 Survival. Each and every representation, warranty, covenant, and agreement contained in this Agreement or in any instrument delivered pursuant to this Agreement shall expire and be of no further force and effect as of the Closing and no party hereto shall thereafter have any liability whatsoever with respect thereto; provided, however, that the covenants contained in this Agreement that by their terms are to be performed (in whole or in part) by the parties hereto following the Closing shall survive in accordance with their respective terms. Following the Closing Date with respect to the representations, warranties, and agreements contained in this Agreement or in any instrument delivered pursuant to this Agreement and, with respect to the covenants contained in this Agreement or in any instrument delivered pursuant to this Agreement, following the applicable survival date of such covenant, such representation, warranty, covenant, and agreement contained in this Agreement or in any instrument delivered pursuant to this Agreement shall terminate and be of no further force or effect and no party hereto shall have any liability with respect thereto.

Section 8.2 Expenses. Except as otherwise expressly provided herein (including in Section 5.10), all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred.

Section 8.3 Notices. All notices, requests, consents, claims, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt), (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested), (c) on the date sent by e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient, or (d) when received by the addressee if mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 8.3):

If to Seller: Midway Gold US Inc.  
c/o FTI Consulting, Inc.  
1001 17th Street  
Suite 1100  
Denver Colorado 80202  
U.S.A.  
Attn: Daniel Brosious  
Email: daniel.brosious@fticonsulting.com

with a copy to: Squire Patton Boggs (US) LLP  
221 E. Fourth Street  
Suite 2900  
Cincinnati, Ohio 45202  
U.S.A.  
Attn: Stephen D. Lerner  
Email: stephen.lerner@squirepb.com

If to Buyer: 0862130 Corp.  
c/o Aintree Resources Inc.  
600-666 Burrard Street  
Vancouver, B.C. V6C 3N7  
Attn: James Hesketh  
Email: jhesketh01@gmail.com

Section 8.4 Interpretation. For purposes of this Agreement: (a) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”, (b) the word “or” is not exclusive, and (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (i) to Articles and Sections mean the Articles and Sections of this Agreement, (ii) to Schedules mean the Schedules attached to the Disclosure Schedules, (iii) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof, and (iv) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. Each of the individuals executing this Agreement and any agreement, document or instrument related hereto is doing so on behalf of the applicable entity, in his or her capacity as an authorized representative of such entity, and is not doing so in his or her individual capacity.

Section 8.5 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 8.6 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party hereto or invalidate or render unenforceable such term or provision in any other jurisdiction.

Section 8.7 Entire Agreement. This Agreement constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and supersedes all prior and contemporaneous representations, warranties, understandings and agreements, both written and oral, with respect to such subject matter.

Section 8.8 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. No party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed. No assignment shall relieve the assigning party of any of its obligations hereunder.

Section 8.9 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 8.10 Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Section 8.11 Governing Law; Submission to Jurisdiction; Venue. This Agreement shall be construed and interpreted, and the rights of the parties shall be determined, in accordance with the Laws of the State of Nevada, without giving effect to any provision thereof that would require the application of the substantive Laws of any other jurisdiction and, to the extent applicable, the Bankruptcy Code. With the exception of any appeals, (a) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any Claims or disputes that may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby, and (b) any and all proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and shall receive notices at such locations as indicated.

Section 8.12 Specific Performance. The parties hereby agree that irreparable damage would occur in the event that any provision of this Agreement is not performed in accordance with its specific terms or is otherwise breached, and that money damages or other legal remedies would not be an adequate remedy for any such damages. Accordingly, the parties acknowledge and hereby agree that in the event of any breach or threatened breach by any party of any of its covenants or obligations set forth in this Agreement, the other parties shall be entitled to injunctive relief to prevent or restrain breaches or threatened breaches of this Agreement by the other, and to specifically enforce the terms and provisions of this Agreement to prevent breaches or threatened breaches of, or to enforce compliance with, the covenants and obligations of the other under this Agreement. Each of the parties hereby agrees not to raise any objections to the availability of the equitable remedy of specific performance to prevent or restrain breaches or threatened breaches of this Agreement by it, and to specifically enforce the terms and provisions of this Agreement to prevent breaches or threatened breaches of, or to enforce compliance with, the covenants and obligations of the other parties under this Agreement.

Section 8.13 Limitation on Damages. In no event shall any party be liable to any other party for any punitive, incidental, consequential, special or indirect damages, including loss of future revenue or income, loss of business reputation or opportunity relating to the breach or alleged breach of this Agreement or diminution of value or any damages based on any type of multiple.

Section 8.14 Disclosure Schedules. The information in the Disclosure Schedules constitutes exceptions or qualifications to representations and warranties of Seller as set forth in this Agreement. Any disclosure made in the Disclosure Schedules shall be deemed to be disclosures made with respect to all representations and warranties contained in this Agreement to the extent reasonably apparent on their face, regardless of whether or not a specific cross-reference is made thereto. No disclosure on the Disclosure Schedules relating to a possible breach or violation of any contract or Law shall be construed as an admission or indication that a breach or violation exists or has actually occurred. Capitalized terms used in the Disclosure Schedules that are not defined therein shall have the meaning given them in this Agreement.

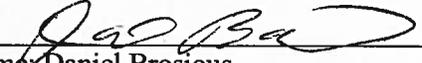
Section 8.15 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

*[Signature Page Follows]*

The parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

**SELLER:**

MIDWAY GOLD US INC., a Nevada corporation

By: 

Name: Daniel Brosious

Title: Chief Restructuring Officer

**BUYER:**

0862130 CORP., a Nevada corporation

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

Name:

Title:

The parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

**SELLER:**

MIDWAY GOLD US INC., a Nevada corporation

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

**BUYER:**

0862130 CORP., a Nevada corporation

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

**SCHEDULE OF PROJECTS**

Tonopah project in Nye County, Nevada.

\* \* \* \* \*