

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:	:	Chapter 11
	:	
	:	Case No. 15-11371 (CSS)
	:	(Jointly Administered)
MOLYCORP MINERALS, LLC, <i>et al.</i> , <sup>1</sup>	:	
	:	<b>Hearing Date (Bid and Other Procedures):</b>
	:	<b>February 27, 2017 at 11:00 a.m. (ET)</b>
Debtors.	:	<b>Obj. Deadline (Bid and Other Procedures):</b>
	:	<b>February 17, 2017 at 4:00 p.m. (ET)</b>
	:	<b>Sale Hearing: March 30, 2017 at 10:00 a.m.</b>

**MOTION OF PAUL E. HARNER, CHAPTER 11 TRUSTEE, FOR AN ORDER  
(I)(A) AUTHORIZING THE SALE FREE AND CLEAR OF ALL LIENS, CLAIMS AND  
ENCUMBRANCES OF THE MOUNTAIN PASS MINE AND CERTAIN RELATED  
ASSETS, (B) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF  
EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION WITH  
THE SALE; AND (II)(A) APPROVING BIDDING PROCEDURES, (B) APPROVING A  
BREAKUP FEE PAYABLE TO THE STALKING HORSE BIDDER, (C) SCHEDULING  
THE AUCTION AND SALE HEARING, (D) APPROVING PROCEDURES FOR THE  
ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND  
UNEXPIRED LEASES, AND (E) GRANTING RELATED RELIEF**

Paul E. Harner, as chapter 11 trustee (the “**Trustee**”) in the above-captioned chapter 11 cases of Molycorp Minerals, LLC, *et al.* (collectively, the “**Minerals Debtors**”), by his undersigned attorneys, submits this motion (the “**Motion**”), pursuant to sections 105(a) and 363(b) of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and L. R. 6004-1 of the Local Rules of Bankruptcy Practice and Procedure (the “**Local Rules**”), seeking entry of orders:

1. (a) approving the sale (the “**Sale**”) of the assets of the Minerals Debtors hereinafter described (the “**Purchased Assets**”) to Rare Earth Global Partners, an entity to be formed to acquire the Purchased Assets (the “**Stalking Horse**”

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<sup>1</sup> The Minerals Debtors are the following 6 entities (the last four digits of their respective taxpayer identification numbers, if any, follow in parentheses): Molycorp Minerals, LLC (4170); Industrial Minerals, LLC; Molycorp Advanced Water Technologies, LLC (1628); PP IV Mountain Pass, Inc. (1205); PP IV Mountain Pass II, Inc. (5361); and RCF IV Speedwagon Inc. (0845).

**Bidder**”) on the terms set forth in the Purchase Agreement (as defined below), free and clear of all liens, claims, and encumbrances, subject to higher and better bids, if any, submitted in accordance with the Bidding Procedures (as defined below); and (b) approving the assumption and assignment of certain executory contracts and unexpired leases in conjunction with such Sale; and

2. (a) establishing bidding procedures (the “**Bidding Procedures**”), substantially in the form attached as **Exhibit 1** to the proposed form of bidding procedures order (the “**Bidding Procedures Order**”) attached hereto as **Exhibit A**, in connection with the Sale of the Purchased Assets; (b) authorizing a breakup fee (the “**Breakup Fee**”) payable to the Stalking Horse Bidder, and, in the event of submission of higher and better bids in accordance with the Bidding Procedures; (c) scheduling an auction (the “**Auction**”); (d) scheduling a hearing (the “**Sale Hearing**”) to approve the Sale; and (e) establishing certain procedures relating to the assumption and assignment of executory contracts and unexpired leases in connection with the Sale, including notice of proposed cure amounts (the “**Assumption and Assignment Procedures**”), and approving the form and manner of notice of the proposed assumption and assignment of executory contracts and unexpired leases (the “**Assumption and Assignment Notice**”).

In support of this Motion, the Trustee respectfully represents as follows:

#### **PRELIMINARY STATEMENT**

1. The Trustee was appointed in these cases and charged with one primary task: to actively pursue a turn-key sale of the Mountain Pass Mine (as hereinafter defined) in order to maximize the value of the Minerals Debtors’ estates for the benefit of the creditors. The Sale proposed herein is the culmination of a comprehensive sales and marketing processes overseen by the Trustee, and upon its approval by this Court, will mark the accomplishment of this difficult task and move the Trustee closer toward his ultimate goal of confirming a liquidating plan in these cases.

2. For the convenience of the Court and parties in interest, the following is a summary timeline identifying the relevant dates and proposed deadlines in connection with the Bidding Procedures and Sale:

- Feb. 17, 2017                      Deadline for objections to the Bidding Procedures;
- Feb. 24, 2017                      Deadline for filing Purchase Agreement executed by the Stalking Horse Bidder;

- March 3, 2017 Proposed deadline for filing and service of the Assumption and Assignment Notice;
- March 3, 2017 Date of publication of the notice of Auction;
- March 13, 2017 Deadline for filing objections to the assumption and assignment of executory contracts and unexpired leases and proposed cure amounts, except as to adequate assurance of future performance;
- March 17, 2017 Qualified Bids (as defined below) due with good faith Deposit, proof of financial ability to pay and mark-up of the Purchase Agreement;
- March 22, 2017 Auction to take place at the Philadelphia offices of Ballard Spahr LLP;
- March 23, 2017 Deadline for filing objections to the Sale;
- March 23, 2017 Deadline for filing objections to the proposed assumption and assignment of executory contracts and unexpired leases on adequate assurance grounds;
- March 30, 2017 @ 10:00 a.m. Sale Hearing;
- April 14, 2017 Proposed Closing Date.

### **GENERAL BACKGROUND**

3. On June 25, 2015 (the “**Petition Date**”), the Minerals Debtors and fifteen (15) of their affiliates (the “**Plan Debtors**”) commenced voluntary cases under chapter 11 of the Bankruptcy Code in this Court.<sup>2</sup>

4. On April 8, 2016, this Court entered its *Findings of Fact, Conclusions of Law and Order Confirming the Plan Debtors’ Fourth Amended Plan of Reorganization* [Plan Debtors D.I.

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<sup>2</sup> The Plan Debtors are Molycorp, Inc.; Magnequench, Inc.; Magnequench International, Inc.; Magnequench Limited; MCP Calco ULC; MCP Canada Holdings ULC; MCP Canada Limited Partnership; MCP Exchangeco Inc.; Molycorp Chemicals & Oxides, Inc.; Molycorp Luxembourg Holdings S.a. r.l.; Molycorp Metals & Alloys, Inc.; Molycorp Minerals Canada ULC; Molycorp Rare Metals Holdings, Inc.; Molycorp Rare Metals (Utah), Inc.; and Neo International Corp.

1580] (the “**Confirmation Order**”) confirming the Plan Debtors’ Fourth Amended Joint Plan of Reorganization (the “**Plan**”) and approving certain related settlement agreements. Prior to entry of the Confirmation Order, however, the Plan was withdrawn as to the Minerals Debtors. The effective date of the Plan occurred on August 31, 2016 [Plan Debtors D.I. 1942] (the “**Effective Date**”). The reorganized Molycorp, Inc. is now known as Neo Performance Materials (“**NPM**”). Since the Plan Debtors’ Effective Date, neither NPM nor any of its affiliated entities hold an ownership interest in any of the Minerals Debtors.

5. On May 2, 2016, pursuant to section 1104(a)(2) of the Bankruptcy Code, the United States Trustee appointed Paul E. Harner as the chapter 11 trustee of the Minerals Debtors. On May 3, 2016, this Court entered a *Corrected Order Approving Appointment of Trustee*, which order approved the appointment of Mr. Harner as the chapter 11 trustee for the Minerals Debtors [Minerals Debtors D.I. 24].

6. The principal assets of the Minerals Debtors are surface rights and certain mineral rights to a rare earth minerals mine and a rare earth extraction facility located in San Bernardino County, California (collectively, the “**Mountain Pass Mine**”). The Mountain Pass Mine was devoted to extracting rare earth minerals and producing rare earth concentrates, rare earth oxides and SorbX® and PhosFIX®, a line of proprietary rare earth-based water treatment products. The products generated by the Minerals Debtors were used in oil refinery catalyst, automotive, water purification and hybrid and electric vehicle applications. During these chapter 11 cases, the Mountain Pass Mine was transitioned into a state of care and maintenance pursuant to a limited operations plan required by the Plan Debtors’ postpetition financing facility. Current operations are limited to the occasional sale of surplus assets or inventory processed prior to placing the mine in “cold-idle” status.

7. The Mountain Pass Mine was previously marketed for sale over a period of several months by the Plan Debtors and their investment banker, Miller Buckfire & Co. LLC (“**Miller Buckfire**”), however, the Plan Debtors were unable to identify a potential buyer on terms acceptable to the Plan Debtors’ and the Minerals Debtors’ senior secured lender and postpetition lender, OCM MLYCo CTB Ltd. (“**Oaktree**”) or an ad hoc group of certain holders (the “**Ad Hoc Group**”) of 10% senior notes secured by substantially all of the assets of the Minerals Debtors (the “**10% Notes**”).

### **JURISDICTION AND VENUE**

8. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

9. The statutory bases for the relief requested herein are section 105(a) and 363(b) of the Bankruptcy Code, along with Bankruptcy Rules 2002 and 6004 and Local Rule 6004-1.

### **THE PROPOSED SALE TRANSACTION AND BIDDING PROCEDURES**

10. The Trustee’s sale process is being managed by Batuta Capital Advisors LLC (“**Batuta**”). Batuta’s strategy was to conduct a focused marketing effort to identify parties best suited to serve as a stalking horse bidder in connection with a project of this type. Initially, Batuta contacted fifty-four parties to gauge their interests in the Sale. As of the date hereof, fourteen parties have executed confidentiality agreements with the Trustee allowing them access to an electronic data room of due diligence information related to the Minerals Debtors and the Mountain Pass Mine. In addition, Batuta has provided each party that has executed a confidentiality agreement, a comprehensive financial model that details the potential to

recommence operations that are cash flow positive against the backdrop of current commodity pricing. To date, Batuta has received indications of interest from four potential stalking horse purchasers.

11. It is through these efforts that Batuta has identified the Stalking Horse Bidder, as a potential purchaser. Following initial negotiations, the Minerals Debtors and the Stalking Horse Bidder have executed a Term Sheet for the Sale of the Purchased Assets (the “**Term Sheet**”) a non-executed copy of which is attached hereto at **Exhibit B**. The Term Sheet contemplates the negotiation and execution of a definitive asset purchase agreement (the “**Purchase Agreement**”) and its filing with the Court on or before February 24, 2017. In accordance with the Term Sheet, the Stalking Horse Bidder seeks to acquire the assets it deems critical to operating the Mountain Pass Mine including but not limited to (a) certain equipment located at the Mountain Pass Mine belonging to Oaktree and leased to the Minerals Debtors (the “**Oaktree Equipment**”); and (b) the minerals rights relating to the Mountain Pass Mine that were granted to Shared Natural Resources, LLC, a joint venture of Oaktree and the holders of the 10% Notes pursuant to the Plan and Confirmation Order.

12. A summary of the material terms, including those provisions that must be highlighted in accordance with L.R. 6004-1(b)(iv), are as follows:

<b>Purchaser:</b>	The Stalking Horse Bidder or “ <b><u>Purchaser</u></b> ”
<b>Sellers:</b>	The Minerals Debtors or “ <b><u>Sellers</u></b> ”
<b>Purchased Assets:</b>	<p>The Purchaser will acquire from the Sellers only the following Purchased Assets:</p> <ol style="list-style-type: none"> <li>1. the real property rights (whether surface or mineral) to the Mountain Pass Mine owned by the Sellers and all facilities and improvements thereto;</li> <li>2. all equipment and other tangible personal</li> </ol>

	<p>property owned by the Sellers located at the Mountain Pass Mine;</p> <ol style="list-style-type: none"> <li>3. all inventory and works in process used in the Sellers' mining and processing operations located at the Mountain Pass Mine;</li> <li>4. all of Sellers' rights under certain contracts applicable to its business at the Mountain Pass Mine to be identified on a schedule to the Purchase Agreement (collectively, the "<b><u>Assigned Contracts</u></b>"); and</li> <li>5. the Sellers' interests in any intellectual property rights exclusively relating to and used in connection with the Sellers' business at the Mountain Pass Mine.</li> </ol>
<b>Assumed Liabilities:</b>	<p>Purchaser will assume the following liabilities and obligations of Sellers:</p> <ol style="list-style-type: none"> <li>1. liabilities related to the Purchased Assets arising on or after the closing date;</li> <li>2. cure amounts and other liabilities under the Assigned Contracts;</li> <li>3. ongoing environmental remediation liabilities and obligations relating to or associated with the Purchased Assets;</li> <li>4. all liabilities and obligations under any permits, licenses and other governmental or regulatory requirements relating to the Purchased Assets, including, without limited to, any surety obligations;</li> <li>5. transfer taxes; and</li> <li>6. other specified liabilities to be agreed upon by the parties.</li> </ol>
<b>Purchase Price:</b>	<p>\$40 million, in cash, <i>plus</i> any amounts required to cure all costs and expenses associated with the assumption by the Purchaser of the Assigned Contracts, <i>plus</i> any transfer taxes arising from or in connection with the Proposed Transaction (collectively, the "<b><u>Purchase Price</u></b>").</p>

<b>Deposit:</b>	5% of the Purchase Price (the “ <b>Deposit</b> ”), which will be payable upon execution of the Purchase Agreement and will be applied toward the Purchase Price at closing.
<b>Liens and Encumbrances:</b>	All Purchased Assets will be transferred to the Purchaser, pursuant to Section 363(f) of the Bankruptcy Code, free and clear of all claims, liens, encumbrances, interests and other restrictions of any kind or nature whatsoever. Any such liens existing at the time of the closing under the Purchase Agreement will attach to the sale proceeds according to their relative priorities, which proceeds will be held by the Sellers until the Bankruptcy Court orders, or the parties otherwise agree on, the allocation of the proceeds.
<b>“As Is, Where Is” Transaction:</b>	The Sale will be on an “ <b>as is, where is</b> ” basis and without representations or warranties of any kind, nature or description by the Trustee or the Sellers whether written or verbal, whether express, implied or by operation of law.
<b>Excluded Assets:</b>	<p>Sellers will retain their interests in all assets other than the Purchased Assets, including:</p> <ol style="list-style-type: none"> <li>1. the Chlor-Alkali Plant;</li> <li>2. the PowerGen Facilities;</li> <li>3. the approximately two-acres of real property on which a convenience store is proposed to be located, the sale of which the Sellers are negotiating;</li> <li>4. any avoidance actions or claims arising from or related to the Purchased Assets; and</li> <li>5. any insurance recovery or other claims arising from or relating to the leach tanks or the failure thereof located at the Mountain Pass Mine.</li> </ol>
<b>Working Capital:</b>	The Purchased Assets shall be conveyed without working capital or other cash or cash equivalents of the Sellers.

<b>Employees:</b>	The Purchaser will offer employment, effective upon the closing, to all current employees primarily engaged in the Sellers' business at the Mountain Pass Mine. Such offers of employment will be on substantially similar terms and with substantially similar compensation and benefits as those to which such employees were entitled from Sellers as of immediately prior to the closing.
<b>Closing Conditions:</b>	<p>Usual and customary closing conditions for transactions of this size and type (provided, that there will be no financing contingency of the Purchaser), including but not limited to:</p> <ol style="list-style-type: none"> <li>1. an agreement in principal regarding the Oaktree Equipment; and</li> <li>2. license, lease, sale or other transfer of the mineral rights.</li> </ol>
<b>Approvals:</b>	Except for the final approval of Purchaser's investment committee, which Purchaser will obtain within two business days of completion of its due diligence, there are no corporate or other approvals required to be obtained by Purchaser. Except for any consents required under any Assigned Contracts or by applicable law, no other approvals or consents are required for closing of the transactions contemplated by the Purchase Agreement.
<b>Termination; Break-Up Fee:</b>	<p>Sellers may terminate the Purchase Agreement at any time following execution if: (i) the Bankruptcy Court has approved, or the Sellers have consummated, a Competing Transaction (as defined below); or (ii) Sellers voluntarily terminate the Purchase Agreement or decline to close thereunder for any reason other than in connection with the Sellers' termination of the Purchase Agreement for a breach by the Purchaser. In the event of such termination, Sellers will pay the Purchaser a fee equal to 4.5% of the Purchase Price (the "<b><u>Breakup Fee</u></b>").</p> <p><b><u>"Competing Transaction"</u></b> means any of the following, other than the Sale: (a) a plan of reorganization or other financial and/or corporate restructuring of Sellers that substantially prohibits or impairs the Sale; (b) the sale or disposition by Sellers of all or a material portion of the Purchased Assets, (c) a merger, consolidation, business combination, liquidation or recapitalization of Sellers that substantially prohibits or impairs the Sale.</p>

<b>Expenses:</b>	Each party will be responsible for its own out-of-pocket costs incurred in respect of the Sale, including all fees and disbursements of legal, accounting, investment banking and other advisors and any brokers' or finders' fees.
<b>Remedies:</b>	<p>The Sellers will be entitled to retain the deposit upon any failure to close the Sale as contemplated by the Purchase Agreement, other than as a result of a breach by Sellers. Sellers' sole remedy upon a termination of the Purchase Agreement as a result of a breach by Purchaser will be to retain the Deposit.</p> <p>Purchaser's sole remedy upon a termination of the Purchase Agreement as a result of a breach by Sellers will be the receipt of the Breakup Fee, and in such event, Sellers will return the Deposit to Purchaser.</p>
<b>Closing:</b>	The date on which the transactions contemplated by the Purchase Agreement close, which will be no later than fourteen days following the entry of a sale order entered by the Bankruptcy Court.

13. As more fully set forth in **Exhibit 1** attached to the proposed form of Bidding Procedures Order, the Trustee seeks approval of the following Bidding Procedures which follow, in relevant part, the bidding procedures proposed by the Plan Debtors and approved by this Court in connection with the Plan.

<b><u>Bid Deadline:</u></b>	<p>A Potential Bidder (as defined below) that desires to make a bid shall deliver written and electronic copies of its bid in both PDF and WORD format to the Notice Parties (as defined below) so as to be received no later than <b>5:00 p.m. (Eastern Time) on March 17, 2017 (the "<u>Bid Deadline</u>")</b>.</p> <p>Information that must be provided to the "<b><u>Notice Parties</u></b>" under the Bidding Procedures must be provided to the following parties: (1) Chapter 11 Trustee, Paul E. Harner, c/o Ballard Spahr LLP, 919 Third Avenue, 37th Floor, New York, NY 10022, Email: harnerp@ballardspahr.com; (2) Counsel to Trustee, Tobey M. Daluz, Ballard Spahr LLP, 919 N. Market Street, 11th Floor, Wilmington, DE 19801, Email: daluzt@ballardspahr.com and Vincent J. Marriott III, Ballard Spahr LLP, 1735 Market Street, 51st</p>
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	<p>Floor, Philadelphia, PA 19103, Email: marriott@ballardspahr.com; and (3) Eduardo Gonzalez and Alex Zyngier, Batuta Capital Advisors LLC, 475 Park Avenue South, Floor 12, New York, NY 10016, Email: egonzalez@batutaadvisors.com and azyngier@batutaadvisors.com.</p>
<p><b><u>Form and Content of a Qualified Bid:</u></b></p>	<p>A qualified bid (a “<b><u>Qualified Bid</u></b>”) is a signed document from a potential bidder (a “<b><u>Potential Bidder</u></b>”) that is accompanied by a good faith deposit in the amount of five percent (5%) of the proposed purchase price (the “<b><u>Good Faith Deposit</u></b>”) and that provides that:</p> <ol style="list-style-type: none"> <li>1. the Potential Bidder offers to purchase the assets indicated in its bid and to assume related liabilities indicated in the bid at the purchase price and upon the terms and conditions set forth in the asset purchase agreement enclosed therewith, marked to show any proposed amendments and modifications to the Purchase Agreement, (the “<b><u>Marked Agreement</u></b>”);</li> <li>2. the Potential Bidder will pay any cure costs arising from the assumption of any applicable executory contracts and/or unexpired leases;</li> <li>3. the Potential Bidder has made or will make all necessary filings under applicable regulatory, antitrust and other laws, if applicable, and pay the fees associated with such filings;</li> <li>4. the bid is formal, binding and unconditional (except for those conditions expressly set forth in the applicable Marked Agreement, including any conditions relating to the assumption and assignment of contracts and/or leases) and is not subject to any due diligence or financing contingency and is irrevocable until the first business day following the closing of the Sale;</li> <li>5. the consideration set forth in such bid is higher or better than the consideration provided by the Stalking Horse Bidder, taking into account the Breakup Fee and Minimum Overbid (as defined below); and</li> <li>6. the bidder (other than the Stalking Horse Bidder)</li> </ol>

	is not entitled to any breakup fee, termination fee, expense reimbursement or similar type of payment or reimbursement and includes a waiver of any substantial contribution administrative expense claim under section 503(b) of the Bankruptcy Code related to the bid.
<b><u>Auction:</u></b>	If more than one Qualified Bid is received by the Bid Deadline, the Trustee will conduct the Auction. The Auction will take place at <b>10:00 a.m. (Eastern Time) on March 22, 2017</b> , at the offices of Ballard Spahr LLP, 1735 Market Street, 48th Floor, Philadelphia, PA 19103, or such other time as the Trustee may notify all Qualified Bidders. Only the Potential Bidders who have submitted Qualified Bids will be eligible to participate at the Auction, subject to such limitations as the Trustee may impose in good faith. For purposes hereof, the Stalking Horse Bidder shall be a Qualified Bidder and the Purchase Agreement shall be a Qualified Bid
<b><u>Minimum Overbid:</u></b>	<p>The Trustee may select one Qualified Bid as the “<b><u>Baseline Bid.</u></b>” At the Auction, participants will be permitted to increase their bids and bidding will start at the purchase price and other terms proposed in the Baseline Bid, and will proceed thereafter in increments of \$250,000 (the “<b><u>Minimum Overbid</u></b>”). The Trustee reserves the right to change any Minimum Overbid prior to or during the Auction.</p> <p>The Stalking Horse Bidder will be entitled to a “credit” in the amount of the Breakup Fee to be counted towards its bid, such that the cash and other consideration proposed by the Stalking Horse Bidder plus the Breakup Fee must exceed the most recent bid by at least the Minimum Overbid.</p>
<b><u>Additional Rules for Auction:</u></b>	The Trustee may adopt additional rules for the Auction at any time that the Trustee determines to be appropriate to promote the goals of the bidding process and are not inconsistent with these Bidding Procedures. The identity of each bidder at the Auction will be fully disclosed to all other bidders and all material terms of each Qualified Bid submitted in response to the Baseline Bid or to any successive bids made at the Auction will be fully disclosed to all other bidders throughout the entire Auction, and each Qualified Bidder will be permitted what the Trustee determines to be an appropriate amount of time to respond

	<p>to the previous bid at the Auction.</p> <p>The Trustee reserves the right to, and may, reject at any time before entry of the an order approving the Sale (the “<b><u>Sale Order</u></b>”) any bid that, in the Trustee’s judgment, is: (a) inadequate or insufficient; (b) not in conformity with the requirements of the Bankruptcy Code, these Bidding Procedures or the terms and conditions of the Sale; or (c) contrary to the best interests of the Minerals Debtors and their estates. In doing so, the Trustee may take into account the factors set forth in the Bidding Procedures regarding the contents of a Qualified Bid.</p>
<b><u>Selection of Successful Bid:</u></b>	<p>Prior to the conclusion of the Auction, the Trustee will: (a) review and evaluate each bid made at the Auction and identify the highest or otherwise best offer (the “<b><u>Successful Bid</u></b>”) and the next highest or otherwise best bid (the “<b><u>Next Highest Bid</u></b>”); and (b) notify all Qualified Bidders participating in the Auction, prior to its adjournment, of the identity of the party that submitted the Successful Bid (the “<b><u>Successful Bidder</u></b>”), the amount and other material terms of the Successful Bid, and the identity of the party that submitted the Next Highest Bid (the “<b><u>Next Highest Bidder</u></b>”).</p>
<b><u>Acceptance of Qualified Bids:</u></b>	<p>The Trustee’s presentation of a Successful Bid to the Bankruptcy Court for approval does not constitute the Trustee’s acceptance of such bid. The Trustee will be deemed to have accepted a Successful Bid only when such bid has been approved by the entry of the Sale Order.</p> <p>If for any reason a Successful Bidder fails to consummate its purchase, the Trustee may proceed to a Sale with the Next Highest Bidder as soon as is commercially reasonable. If such failure to consummate the purchase is the result of a breach by the Successful Bidder, the Trustee shall have the right to retain such Successful Bidder’s Good Faith Deposit (unless required to return it by an order of the Bankruptcy Court) and shall reserve the right to seek all available additional damages from the Successful Bidder.</p>
<b><u>Return of Deposits:</u></b>	<p>The Good Faith Deposits of all Qualified Bidders, including the Stalking Horse Bidder, will be held by the Trustee in a deposit account and will not become property of the Minerals Debtors’ bankruptcy estates unless released pursuant to further order of the Bankruptcy Court. The Trustee will retain the Good Faith Deposits of the</p>

	Successful Bidder and the Next Highest Bidder until the closing of the Sale unless otherwise ordered by the Bankruptcy Court. The Good Faith Deposits of the other Qualified Bidders will be returned within five (5) business days of the entry of the Sale Order. At the closing of the Sale contemplated by the Successful Bid, the Successful Bidder will be entitled to a credit for the amount of its/their Good Faith Deposit. The Good Faith Deposit of the Next Highest Bidder will be released five (5) business days after the closing of the Sale.
<b><u>“As Is, Where Is”:</u></b>	The Sale will be on an “ <b>as is, where is</b> ” basis and without representations or warranties of any kind, nature or description by the Trustee, the Minerals Debtors, their agents or the bankruptcy estates, whether written or verbal, whether express, implied or by operation of law, except and solely to the extent expressly set forth in the Purchase Agreement or Marked Agreement, as applicable, that is approved by the Bankruptcy Court and consummated. Each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Purchased Assets prior to making its bid, and that it has relied solely upon its own independent review and investigation in making its bid. Except as otherwise provided in the Purchase Agreement, Marked Agreement or the Sale Order, all of the Minerals Debtors’ right, title and interest in the relevant Purchased Assets shall be sold free and clear of liens, claims and encumbrances (collectively, “ <b><u>Liens</u></b> ”), with any Liens to attach to the proceeds of the Sale.
<b><u>Modification to Bidding Procedures:</u></b>	The Trustee may, amend the Bidding Procedures at any time and from time to time that he may determine will best promote the goals of the bidding process, including extending or modifying any of the dates set forth herein.

14. Pursuant to Local Rule 6004-1(c)(ii), each bidder participating at the Auction will be required to confirm that it has not engaged in any collusion with respect to the bidding or the Sale. The Auction will be conducted openly and will be transcribed. However, the Trustee requests that the Court waive the requirement in Local Rule 6004-1(c)(ii) that all creditors be permitted to attend the Auction, and, instead, limit attendance at the Auction to

Qualified Bidders and their professionals and representatives as set forth in the Bidding Procedures.

**RELIEF REQUESTED**

15. By this Motion, the Trustee *first* requests entry of the Bidding Procedures Order, which will, among other things, (a) authorize the Bidding Procedures and approve the form and manner of notice of the Bidding Procedures in connection with the Sale of the Purchased Assets; (b) schedule the Auction and the Sale Hearing to consider the Sale; (c) approve the Breakup Fee and other bid protections; (d) authorize procedures governing the assumption and assignment of executory contracts and unexpired leases and approved the form and manner of notice thereof; and (e) grant related relief.

16. *Second*, at the Sale Hearing, the Debtors will request entry of the Sale Order, which will, (a) designate the Successful Bidder and approve the Sale of the Purchased Assets in accordance with the Purchase Agreement or Marked Agreement between the Minerals Debtors and the Successful Bidder, which Sale shall be free and clear of all liens, claims, encumbrances, and other interests (other than expressly specified permitted encumbrances and assumed liabilities, all as more specifically set forth in the Successful Bid); (b) approve the assumption and assignment of certain executory contracts and unexpired leases related to the Purchased Assets; and (c) grant related relief.

**LEGAL BASIS FOR THE RELIEF REQUESTED**

**I. REQUEST FOR APPROVAL OF BIDDING PROCEDURES**

**A. Standards for Approval of Bidding Procedures**

17. Section 363(b) of the Bankruptcy Code permits, after notice and a hearing, the sale, other than in the ordinary course of business, of property of the estate. 11 U.S.C. § 363(b). Under section 105(a) of the Bankruptcy Code, “[t]he court may issue any order . . . that is

necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). In essence, the Court may enter an order that safeguards the value of the debtor’s estate if doing so is consistent with the Bankruptcy Code. *See, e.g., Chinichian v. Campolongo (In re Chinichian)*, 784 F.2d 1440, 1443 (9th Cir. 1986) (“Section 105 sets out the power of the bankruptcy court to fashion orders as necessary pursuant to the purposes of the Bankruptcy Code.”); *In re Cooper Props. Liquidating Trust, Inc.*, 61 B.R. 531, 537 (Bankr. W.D. Tenn. 1986) (acknowledging that “the [b]ankruptcy [c]ourt is one of equity and as such it has a duty to protect whatever equities a debtor may have in property for the benefit of its creditors as long as that protection is implemented in a manner consistent with the bankruptcy laws.”).

18. To that end, courts recognize that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate, and, therefore, are appropriate in the context of bankruptcy sales. *In re Edwards*, 228 B.R. 552, 561 (Bankr. E.D. Pa. 1998) (“The purpose of procedural bidding orders is to facilitate an open and fair public sale designed to maximize value for the estate.”); *see also Official Comm. Of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 659 (S.D.N.Y. 1992) (bidding procedures “encourage bidding and . . . maximize the value of the debtor’s assets”).

19. The Trustee believes that the Bidding Procedures are appropriately tailored to ensure that the bidding process is fair and reasonable and will yield the maximum value for the Minerals Debtors’ estates and creditors. The proposed Bidding Procedures are designed to maximize the value received for the Purchased Assets by facilitating a competitive bidding process in which all potential bidders are encouraged to participate and submit competing bids. The Bidding Procedures provide potential bidders with sufficient notice and an opportunity to

acquire information necessary to submit a timely and informed bid. At the same time, the Bidding Procedures provide the Trustee with the opportunity to consider all competing offers and to select, in his reasonable business judgment, the highest or otherwise best offer(s) for the Purchased Assets.

20. Accordingly, the Trustee believes the Court should approve the Bidding Procedures. The Bidding Procedures contain features — including bid deadlines, auction procedures and bid criteria — that are largely consistent with other procedures previously approved by courts in this District in other large chapter 11 cases. *See, e.g., In re Energy Future Holdings Corp.*, No. 14-10979 (CSS) (Bankr. D. Del. Jan. 14, 2015) [Docket No. 3295]; *In re Dendreon Corp.*, No. 14-12515 (PJW) (Bankr. D. Del. Dec. 17, 2014) [Docket No. 195]; *In re RS Legacy Corp.*, No. 15-10197 (BLS) (Bankr. D. Del. Mar. 12, 2015) [Docket No. 946]; *In re Savient Pharm., Inc.*, No. 13-12680 (MFW) (Bankr. D. Del. Nov. 4, 2013) [Docket No. 110]; *In re OSH 1 Liquidating Corp.*, No. 13-11565 (CSS) (Bankr. D. Del. July 8, 2013) [Docket No. 155]; *In re Vertis Holdings, Inc.*, No. 12-12821 (CSS) (Bankr. D. Del. Nov. 2, 2012) [Docket No. 206]. Like those approved in other cases, the Bidding Procedures that the Trustee proposes will help maximize the value of the bids received for their assets.

**B. Authority to Offer Proposed Breakup Fee to the Stalking Horse Bidder**

21. As part of the Bidding Procedures Order, the Trustee is also requesting authority to enter, if applicable, into the Purchase Agreement and to offer the Breakup Fee to such Stalking Horse Bidder. The Breakup Fee is designed to incentivize the Stalking Horse Bidder to make the initial binding bid for the Purchased Assets and establish a floor price for the Auction. If approved by this Court, the Trustee would be authorized to offer the Stalking Horse Bidder a Breakup Fee of up to 4.5% of the cash consideration offered by the Stalking Horse Purchaser. The Breakup Fee would only be payable in the event the Stalking Horse Bidder is overbid at the

Auction and the Minerals Debtors close a transaction with the overbidder. Any such overbid must be in an amount greater than the Stalking Horse Bid, including the applicable Breakup Fee and Minimum Overbid, and include sufficient cash consideration to pay the Breakup Fee in full.

22. Approval of breakup fees and other forms of bid protections in connection with the sale of significant assets is an established practice in chapter 11 cases. Section 363(b)(1) of the Bankruptcy Code provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). In the Third Circuit, courts have authorized transactions outside the ordinary course of business when the transaction has a sound business purpose and is proposed in good faith. *See In re Martin*, 91 F.3d 389, 395 (3d Cir. 1996); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991); *In re Exaeris, Inc.*, 380 B.R. 741, 744 (Bankr. D. Del. 2008).

23. Under these principles, bidding incentives may be approved when they provide a benefit to the estate by maximizing the value of the estate’s assets. *See Calpine Corp. v. O’Brien Env’tl. Energy, Inc. (In re O’Brien Env’tl. Energy, Inc.)*, 181 F.3d 527, 535-37 (3d Cir. 1999) (detailing situations where bidding incentives are appropriate in bankruptcy because they provide a benefit to the estate). In the Third Circuit, termination or breakup fees are considered administrative expenses and, therefore, the payment of such fees must provide a postpetition benefit to the bankruptcy estate. *See Id.* at 533. In *O’Brien*, the Third Circuit provided two examples of a potential benefit accruing from the payment of a termination fee. *Id.* First, a benefit to the estate may arise if, “assurance of a break-up fee promoted [a] more competitive bidding [process], such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited.” *Id.* at 537. Second, a breakup fee encourages

potential bidders to evaluate thoroughly a debtor's value, thereby "increasing the likelihood that the price at which the debtor is sold will reflect its true worth." *Id.*

24. In connection with evaluating and analyzing the Purchased Assets available for sale, the Stalking Horse Bidder has incurred and will continue to incur substantial costs. By offering the Breakup Fee, the Trustee was able to incentivize the Stalking Horse Bidder to undertake those costs and make an initial bid for the Purchased Assets serves as the floor price for the Auction. This initial bid will serve as a catalyst for other bids. As a result, the Trustee believes that being able to enter into the Purchase Agreement, including the provisions that provide for the Breakup Fee and Minimum Overbid, will place the Minerals Debtors in a more favorable position to solicit competing bids that may be materially higher or otherwise more favorable than the initial Stalking Horse Bidder's bid. In short, the Stalking Horse Bidder should be compensated for the risk they are taking and the benefit they are providing to the Minerals Debtors' estates. Accordingly, the Trustee's ability to offer the Breakup Fee will enable him to obtain the greatest benefit to the estate from the sale of the Purchased Assets.

25. Moreover, payment of the Breakup Fee will not diminish the Debtors' estates. The Trustee does not intend to terminate the Purchase Agreement if to do so would incur an obligation to pay the Breakup Fee, except to accept an overbid that must exceed the total amount of the Stalking Horse Bid and include sufficient cash consideration to pay the applicable Breakup Fee in full.

26. Accordingly, the Breakup Fee and other bidder incentives satisfy the requirements for approval in this Circuit and should be approved.

## II. REQUEST FOR APPROVAL OF PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

### A. Description of Assumption and Assignment Procedures

27. As part of the Sale, the Debtors may assume and assign certain of their executory contracts and unexpired leases to one or more Purchasers (the “**Assumed and Assigned Agreements**”). The Debtors propose that the following Assumption and Assignment Procedures govern the assumption and assignment of the Assumed and Assigned Agreements in connection with the Sale of Purchased Assets to the Successful Bidder(s):

- a. By no later than five (5) business days after entry of the Bidding Procedures Order, the Trustee will file a schedule (the “**Cure Schedule**”), which will be attached to the Assumption and Assignment Notice, identifying (a) the Assumed and Assigned Agreements, potentially to be assumed and assigned to the Staking Horse Bidder; and (b) the amount, if any, the Minerals Debtors believe is necessary to cure all monetary defaults under such agreement pursuant to section 365 of the Bankruptcy Code (the “**Cure Costs**”);
- b. Upon the filing of the Cure Schedule, the Trustee will serve the Cure Schedule and the Assumption and Assignment Notice on each of the nondebtor counterparties listed on the Cure Schedule by first class mail. The Assumption and Assignment Notice will state that the Minerals Debtors are or may be seeking the assumption and assignment of the Assumed and Assigned Agreements and include (i) a description of each executory contract and unexpired lease that may be assumed and assigned in connection with the Sale; (ii) the deadline for objecting (a “**Cure/Assignment Objection**”) to the assumption and assignment of the applicable Assumed and Assigned Agreement, including to the amount of the proposed Cure Costs related to any such executory contract or unexpired lease, which deadline will be no later than three (3) business days prior to the Bid Deadline (the “**Cure/Assignment Objection Deadline**”); and (iii) the deadline for objecting (an “**Adequate Assurance Objection**”) to the ability of the relevant purchaser to provide adequate assurance of future performance under any Assumed and Assigned Agreement, which deadline shall be no less than one (1) day prior to the Sale Hearing (the “**Adequate Assurance Objection Deadline**” and collectively, the “**Cure/Adequate Assurance Objection Deadlines**”).
- c. Each Cure/Assignment Objection and/or Adequate Assurance Objection must be filed with the Bankruptcy Court and served on the following parties so as to be received no later than the applicable Cure/Adequate

Assurance Objection Deadline: (1) Chapter 11 Trustee, Paul E. Harner, c/o Ballard Spahr LLP, 919 Third Avenue, 37th Floor, New York, NY 10022, Email: harnerp@ballardspahr.com; (2) Counsel to Trustee, Tobey M. Daluz, Ballard Spahr LLP, 919 N. Market Street, 11th Floor, Wilmington, DE 19801, Email: daluzt@ballardspahr.com and Vincent J. Marriott III, Ballard Spahr LLP, 1735 Market Street, 51st Floor, Philadelphia, PA 19103, Email: marriott@ballardspahr.com; (3) Eduardo Gonzalez and Alex Zyngier, Batuta Capital Advisors LLC, 475 Park Avenue South, Floor 12, New York, NY 10016, Email: egonzalez@batutaadvisors.com and azyngier@batutaadvisors.com; and (4) the Office of the United States Trustee, District of Delaware, J. Caleb Boggs Federal Building, 844 King Street, Suite 2207, Wilmington, Delaware 19801 (Attn: Linda J. Casey, Esq. and David L. Buchbinder, Esq.).

- d. If no objections are received with respect to any Assumed and Assigned Agreement, then the Cure Cost set forth in the Cure Schedule for such agreement will be binding upon the nondebtor counterparty to such agreement for all purposes and will constitute a final determination of the Cure Cost required to be paid by the applicable Minerals Debtor or Purchaser in connection with the assumption and assignment of such agreement. In addition, all counterparties to the Assumed and Assigned Agreements who fail to file an objection before the Cure/Adequate Assurance Objection Deadlines, as applicable, will be (i) forever barred from objecting to the Cure Costs or adequate assurance of future performance with respect to the Assumed and Assigned Agreements, and the Minerals Debtors and the purchaser(s) will be entitled to rely solely upon the Cure Cost set forth in the Cure Schedule; (ii) deemed to have consented to the assumption and assignment; and (iii) forever barred and estopped from asserting or claiming against the applicable Minerals Debtor(s) or the purchaser(s) that any additional amounts are due or other defaults exist, that conditions to assignment must be satisfied or that there is any other objection or defense to the assumptions or assignment of the applicable Assumed and Assigned Agreements.
- e. At any time prior to the Sale Hearing, the Successful Bidder may amend the Cure Schedule to (i) include any additional executory contract or unexpired lease thereon, or (ii) remove any executory contract or unexpired lease therefrom. The non-debtor party or parties to any such contract or lease will be notified of the inclusion or exclusion by written notice mailed within one (1) business day after such determination.
- f. Where a nondebtor counterparty to an Assumed and Assigned Agreement files a Cure/Assignment Objection asserting a cure amount higher than the proposed Cure Cost (the “**Disputed Cure Amount**”), then (i) to the extent that the parties are able to consensually resolve the Disputed Cure Amount prior to the Sale Hearing, and subject to the applicable purchaser’s consent

to such resolution, the parties shall amend the Cure Schedule; or (ii) to the extent the parties are unable to consensually resolve the dispute prior to the Sale Hearing, the amount to be paid under section 365 of the Bankruptcy Code with respect to such Disputed Cure Amount will be determined at the Sale Hearing or at such other date and time as may be fixed by the Court. The Trustee intends to cooperate with counterparties to Assumed and Assigned Agreements to attempt to reconcile any differences with respect to a particular Cure Cost. At any time prior to or after the Court's ruling on the Disputed Cure Amount, the Trustee may remove such contract or lease from the list of Assumed and Assigned Agreements.

28. The Trustee requests that any party failing to object to the proposed transactions be deemed to consent to the treatment of its executory contract and/or unexpired lease under section 365 of the Bankruptcy Code. Moreover, the Trustee requests that each such party be deemed to consent to the assumption and assignment of its executory contract and/or unexpired lease notwithstanding any anti-alienation provision or other restriction on assignment in such contract or lease. *See* 11 U.S.C. § 365(c)(1)(B), (e)(2)(A)(ii), (f).

**B. Approval of Assumption and Assignment Procedures and the Assumption and Assignment Notice**

29. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor in possession “subject to the court’s approval, may assume or reject any executory contract or [unexpired] lease of the debtor.” 11 U.S.C. § 365(a). The standard governing bankruptcy court approval of a debtor’s decision to assume or reject an executory contract or unexpired lease is whether the debtor’s reasonable business judgment supports assumption or rejection. *See, e.g., In re HQ Global Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003) (finding that debtor’s decision to assume or reject executory contract is governed by business judgment standard and can only be overturned if decision was product of bad faith, whim or caprice); *see also In re Market Square Inn, Inc.*, 978 F.2d 116, 121 (3d Cir. 1992) (finding that assumption or rejection of lease “will be a matter of business judgment by the bankruptcy court”).

30. The business judgment test “requires only that the trustee [or debtor in possession] demonstrate that [assumption] or rejection of the contract will benefit the estate.” *Wheeling-Pittsburgh Steel Corp. v. W. Penn Power Co. (In re Wheeling-Pittsburgh Steel Corp.)*, 72 B.R. 845, 846 (Bankr. W.D. Pa. 1987). Any more exacting scrutiny would slow the administration of a debtor’s estate and increase costs, interfere with the Bankruptcy Code’s provision for private control of administration of the estate, and threaten a court’s ability to control a case impartially. *See Richmond Leasing Co. v. Capital Bank*, 762 F.2d 1303, 1311 (5th Cir. 1983). Moreover, pursuant to section 365(b)(1) of the Bankruptcy Code, for a debtor to assume an executory contract, it must “cure, or provide adequate assurance that the debtor will promptly cure,” any default, including compensation for “actual pecuniary loss” relating to such default. 11 U.S.C. § 365(b)(1).

31. Under section 365(f) of the Bankruptcy Code, a debtor, after assuming a contract, may assign its rights under the contract to a third party. 11 U.S.C. § 365(f); *see also In re Rickel Home Ctr., Inc.*, 209 F.3d 291, 299 (3d Cir. 2000) (“The Code generally favors free assignability as a means to maximize the value of the debtor’s estate.”); *In re Headquarters Dodge, Inc.*, 13 F.3d 674, 682 (3d Cir. 1994) (noting that the purpose of section 365(f) of the Bankruptcy Code is to assist the trustee in realizing the full value of the debtor’s assets). Section 365(f)(2)(B) requires, however, that adequate assurance of future performance by an assignee exist. 11 U.S.C. § 365(f)(2)(B). The purpose of the adequate assurance requirement is to protect the interests of the non-debtor party to an assigned contract, as section 365(k) of the Bankruptcy Code relieves a debtor from liability for any breach of a contract that may occur after an assignment. *Cinicola v. Scharffenberger*, 248 F.3d 110, 120 (3d Cir. 2001). Adequate assurance of future performance is not required for every term of an executory contract or unexpired lease,

but only such terms that are “materially and economically” significant. *In re Fleming Cos., Inc.*, 499 F.3d 300, 305 (3d Cir. 2007). The meaning of “adequate assurance of future performance” depends upon the facts and circumstances of each case, but should be given a “practical, pragmatic construction.” *In re DBSI, Inc.*, 405 B.R. 698, 708 (Bankr. D. Del. 2009); *see also In re Decora Indus.*, 2002 U.S. Dist. LEXIS 27031, at \*23 (D. Del. 2002) (“[A]dequate assurance falls short of an absolute guarantee of payment.”). Adequate assurance may be provided by demonstrating the assignee’s financial health and experience in managing the type of enterprise or property assigned. *See, e.g., In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (finding that adequate assurance is present when prospective assignee of lease from debtor has financial resources and has expressed willingness to devote sufficient funding to business to give it a strong likelihood of success).

32. Central to the Trustee’s proposed sale of Purchased Assets of the Minerals Debtors is the ability to operate the Mountain Pass Mine and the assumption and assignment of executory contracts and unexpired leases is a critical component of the Sale. It is thus an appropriate exercise of business judgment for the Trustee to propose that purchasers may direct the Minerals Debtors to assume and assign to them the contracts and leases that will be required in connection with the Sale. The assumption and assignment of the Assumed and Assigned Agreements will be subject to the final approval by the Court in connection with approval of the Sale. Additionally, the Trustee submits that the objection deadline for counterparties to raise objections to the assumption and assignment of contracts and leases, as proposed in this Motion, are adequate to protect the rights of counterparties to the Minerals Debtors’ contracts and leases. Finally, the Trustee submits that the Assumption and Assignment Notice provides adequate

notice of the proposed assumption and assignment of counterparties' contracts and/or leases and should be approved.

## II. REQUEST FOR APPROVAL OF THE SALE

### A. The Sale of the Purchased Assets is Authorized by Section 363 of the Bankruptcy Code

33. Section 363 of the Bankruptcy Code provides that a debtor, “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b). Although section 363 of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of property of the estate, a sale of a debtor’s assets should be authorized if a sound business purpose exists for doing so. *See In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (“In determining whether to authorize the use, sale or lease of property of the estate under this section, courts require the debtor to show that a sound business purpose justifies such actions”); *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143 (3d Cir. 1986) (implicitly adopting a “sound business purpose” test and a good faith test); *In re Del. & Hudson Ry. Co.*, 124 B.R. 169 (D. Del. 1991) (concluding that the Third Circuit had adopted a “sound business purpose” test). In that regard, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986).

34. Applying section 363, the proposed Sale should be approved. The Trustee has a sound business justification for the Sale of the Purchased Assets. As noted above, the Trustee was appointed for the primary purpose of selling the Mountain Pass Mine for the benefit of the creditors of the Minerals Debtors. Not only is the proposed Sale the best method of maximizing

the recovery for the creditors, it may be the only means for those creditors to obtain a cash distribution in these cases. The fairness and reasonableness of the consideration to be paid by the Successful Bidder will be demonstrated by adequate “market exposure” and an open and fair auction process—the best means for establishing whether a fair and reasonable price is being paid.

**B. The Sale of the Purchased Assets Free and Clear of All Liens, Claims and Encumbrances is Authorized by Section 363(f) of the Bankruptcy Code**

35. The Trustee further submits that it is appropriate to sell the Purchased Assets free and clear of all liens, claims, encumbrances or other interests pursuant to section 363(f) of the Bankruptcy Code (except for those liabilities expressly assumed pursuant to the terms of the Purchase Agreement), with any lien attaching to the proceeds, as and to the extent applicable. Section 363(f) of the Bankruptcy Code authorizes a trustee to sell assets free and clear of liens, interests, and encumbrances if (a) applicable non-bankruptcy law permits the sale of such property free and clear of such interests; (b) such entity consents; (c) such interest is a lien and the price at which such property is to be sold is greater than the 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).

36. This provision is supplemented by section 105(a) of the Bankruptcy Code, which provides that “[t]he Court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a).

37. Because section 363(f) of the Bankruptcy Code is drafted in the disjunctive, satisfaction of any one of its five requirements will suffice to permit the Sale “free and clear” of liens and interests. *In re Dundee Equity Corp.*, 1992 Bank. LEXIS 436, at \*12 (Bankr. S.D.N.Y. March 6, 1992); *In re Bygaph, Inc.*, 56 B.R. 596, 606 n.8 (Bankr. S.D.N.Y. 1986); *Michigan*

*Employment Sec. Comm'n v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1147 n.24 (6th Cir. 1991).

38. The Trustee submits that one or more of the tests of section 363(f) will be satisfied with respect to the Sale of the Purchased Assets. For example, the Trustee believes that section 363(f)(2) of the Bankruptcy Code may be met in connection with the Sale because each of the parties holding a lien on all or a portion of the Purchased Assets will consent, or absent any objection to this Motion, will be deemed to have consented to the Sale. Moreover, all holders of liens, claims, encumbrances, and other interests could be compelled to accept a money satisfaction of their liens in legal or equitable proceedings in accordance with section 363(f)(5) of the Bankruptcy Code. *See, e.g., In re Boston Generating, LLC*, 440 B.R. 302, 333 (Bankr. S.D.N.Y. 2010). Section 363(f) of the Bankruptcy Code therefore authorizes the transfer and conveyance of the Purchased Assets free and clear of all liens, claims, interests or encumbrances except for those liabilities expressly assumed pursuant to the terms of the Purchase Agreement.

**C. The Successful Bidder is Entitled to the Protections Afforded as a Good Faith Purchaser under Section 363(m) of the Bankruptcy Code**

39. The Successful Bidder (including the Stalking Horse Bidder) will be entitled to an order incorporating the protections of section 363(m) of the Bankruptcy Code. That subsection protects a good-faith purchaser as one who purchases assets for value, in good faith, and without notice of adverse claims. Section 363(m) “fosters the ‘policy of not only affording finality to the judgment of the bankruptcy court, but particularly to give finality to those orders and judgments upon which third parties rely.’” *In re Chateaugay Corp.*, 1993 U.S. Dist. LEXIS 6130, at \*9 (S.D.N.Y. 1993) (quoting *In re Abbotts Dairies of Penn., Inc.*, 788 F.2d at 147).

40. While the Bankruptcy Code does not define “good faith,” the Third Circuit has held that the “requirement that a purchaser act in good faith . . . speaks to the integrity of his

conduct in the course of the sale proceedings. Typically, the misconduct that would destroy a purchaser's good faith status at a judicial sale involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders." *In re Abbotts Dairies of Penn., Inc.*, 788 F.2d at 147. As such, a party would have to show "fraud, collusion between the [Stalking Horse Bidder] and other bidders or the [Sellers,] or an attempt to take grossly unfair advantage of other bidders" to demonstrate a lack of good faith. *See In re Tempo Technology Corp.*, 202 B.R. 363, 370 (D. Del. 1996) (rejecting good faith challenge by unsecured creditors at sale hearing).

41. Assuming the Stalking Horse Bidder is the Successful Bidder, the Purchase Agreement was negotiated at arms'-length and in good faith, with both parties represented by their counsel. Similarly, the Trustee expects to show at the Sale Hearing that any other Successful Bidder similarly conducted itself in good faith. The Trustee therefore requests that the Sale Order include a provision that the Successful Bidder for the Purchased Assets is a good-faith purchaser within the meaning of section 363(m) of the Bankruptcy Code.

### **NOTICE**

42. Notice of this Motion has been provided to: (i) counsel for Oaktree; (ii) counsel for the Ad Hoc Group of 10% Notes; (iii) counsel for the indenture trustee for the 10% Notes; (iv) counsel for the sureties; (v) the United States Trustee; (vi) the holders of the 20 largest general unsecured claims against the Minerals Debtors; (vii) counsel for the environmental regulators of the Mountain Pass Mine; and (viii) those parties who have formally filed requests for notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002. The Trustee submits that, under the circumstances, no other or further notice is required.

**NO PRIOR REQUEST**

43. No previous request for the relief sought herein has been made by the Trustee to this or any other court.

**STATEMENT UNDER LOCAL RULE 9013-1(F)**

44. The Trustee hereby consents to the entry of a final order or judgment by this Court if it is determined that the Court, absent consent of the parties, cannot enter a final order or judgment consistent with Article III of the United States Constitution.

WHEREFORE, the Trustee respectfully requests entry of an order, substantially in the form of order attached hereto as **Exhibit A**, and granting such other and further relief as the Court deems proper.

Dated: January 31, 2017  
Wilmington, Delaware

Respectfully submitted,

/s/ Tobey M. Daluz  
Tobey M. Daluz (DE No. 3939)  
Matthew G. Summers (DE No. 5533)  
Leslie C. Heilman (DE No. 4716)  
Laurel D. Roglen (DE No. 5759)  
BALLARD SPAHR LLP  
919 N. Market Street, 11th Floor  
Wilmington, Delaware 19801  
Telephone: (302) 252-4428  
Facsimile: (302) 252-4466  
E-mail: [daluzt@ballardspahr.com](mailto:daluzt@ballardspahr.com)  
[summersm@ballardspahr.com](mailto:summersm@ballardspahr.com)  
[heilmanl@ballardspahr.com](mailto:heilmanl@ballardspahr.com)  
[roglenl@ballardspahr.com](mailto:roglenl@ballardspahr.com)

and

Vincent J. Marriott, III\*  
BALLARD SPAHR LLP  
1735 Market Street, 51st Floor  
Philadelphia, Pennsylvania 19103  
Telephone: (215) 864-8236  
Facsimile: (215) 864-9762  
E-mail: [marriott@ballardspahr.com](mailto:marriott@ballardspahr.com)  
(\*Admitted *Pro Hac Vice*)

*Counsel to the Chapter 11 Trustee*

**EXHIBIT A**

**FORM OF BIDDING PROCEDURES ORDER**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

	X	
In re:	:	Chapter 11
	:	
	:	Case No. 15-11371 (CSS)
	:	(Jointly Administered)
MOLYCORP MINERALS, LLC, <i>et al.</i> , <sup>1</sup>	:	
	:	Re Docket No.
Debtors.	:	

**ORDER (A) APPROVING BIDDING PROCEDURES FOR THE SALE OF THE  
MOUNTAIN PASS MINE AND CERTAIN RELATED ASSETS, (B) APPROVING A  
BREAKUP FEE PAYABLE TO THE STALKING HORSE BIDDER, (C) SCHEDULING  
THE AUCTION AND SALE HEARING, (D) APPROVING PROCEDURES FOR THE  
ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND  
UNEXPIRED LEASES, AND (E) GRANTING RELATED RELIEF**

This matter coming before the Court on the Motion for an Order (A) Approving Bidding Procedures for the Sale of the Mountain Pass Mine and Certain Related Assets, (B) Approving a Breakup Fee Payable to the Stalking Horse Bidder, (C) Scheduling the Auction and Sale Hearing, (D) Approving Procedures for the Assumption and Assignment of Executory Contracts and Unexpired Leases, and (E) Granting Related Relief (the “Motion”),<sup>2</sup> filed by Paul E. Harner, the chapter 11 trustee appointed in the above-captioned cases (the “Trustee”); the Court having reviewed the Motion and having considered the statements of counsel and the evidence adduced with respect to the Motion at a hearing before the Court (the “Hearing”), if any; and the Court having found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order, (ii) venue is proper in this district pursuant to 28 U.S.C.

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<sup>1</sup> The Minerals Debtors are the following 6 entities (the last four digits of their respective taxpayer identification numbers, if any, follow in parentheses): Molycorp Minerals, LLC (4170); Industrial Minerals, LLC; Molycorp Advanced Water Technologies, LLC (1628); PP IV Mountain Pass, Inc. (1205); PP IV Mountain Pass II, Inc. (5361); and RCF IV Speedwagon Inc. (0845).

<sup>2</sup> Capitalized terms not otherwise defined herein have the meanings given to them in the Motion or the applicable exhibits to the Motion, or, if not defined therein, the Bidding Procedures.

§§ 1408 and 1409, (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b) and (iv) no examiner having been appointed in these chapter 11 cases and (v) notice of the Motion and the Hearing was sufficient under the circumstances; after due deliberation the Court having determined that the relief requested in the Motion is in the best interests of the Minerals Debtors, their estates and their creditors; and good and sufficient cause having been shown;

**IT IS HEREBY FOUND AND CONCLUDED, as follows:**

A. The Trustee has offered good and sufficient reasons for, and the best interests of their estates will be served by, this Court granting the Motion to the extent provided in this Order, including approval of (i) the Bidding Procedures, attached hereto as **Exhibit 1**, (ii) the procedures described below for the determination of the amounts necessary to cure defaults under the Assumed and Assigned Agreements so as to permit the assumption and assignment under section 365 of the Bankruptcy Code of the Assumed and Assigned Agreements and (iii) the form and manner of notice of the Auction described in the Motion and this Order.

B. The issuance and immediate effectiveness of this Order as of the date hereof, including approval of the Bidding Procedures, is supported by evidence of compelling business justifications and other circumstances demonstrating that the relief granted by this Order is necessary to avoid immediate and irreparable harm to the Minerals Debtors and their estates.

C. The proposed notice of the Bidding Procedures, as set forth in the Motion and this Order, is appropriate and sufficient, and is reasonably calculated to provide all interested parties with timely and proper notice of the Bidding Procedures, the Auction and the Sale Hearing, and no other or further notice shall be required.

D. The Bidding Procedures were negotiated in good faith and at arm's-length.

E. The Bidding Procedures are reasonably designed to maximize the value to be achieved for the Purchased Assets.

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED as set forth herein. Any objections or responses to the Motion that have not been withdrawn, waived or settled prior to the entry of this order are hereby OVERRULED.

2. The Bidding Procedures, attached hereto as **Exhibit 1**, are hereby approved, are incorporated herein by reference and shall govern all bids and proceedings relating to the Purchased Assets.

3. The Auction will be conducted openly and will be transcribed. The requirement of Local Rule 6004-1(ii)(B) that all creditors be permitted to attend the Auction is hereby waived. Only Qualified Bidders and their professionals and/or representatives may attend the Auction.

4. As soon as reasonably practicable following the conclusion of the Auction, the Trustee shall file copies of the Successful Bid and the Next Highest Bid with the Court.

5. **The Sale Hearing will begin at 10:00 a.m. (Eastern Time) on March 30, 2017** and may be continued from time to time by the Court without further notice or with limited or shortened notice to parties other than the announcement of the adjourned date at the Sale Hearing or any continued hearing.

6. Promptly after the conclusion of the Auction, but no later than before the Sale Hearing, the Trustee shall file the Sale Order, which shall include approval of the Sale as agreed upon between the Trustee and the Successful Bidder.

7. Pursuant to sections 105, 363 and 503 of the Bankruptcy Code, the Minerals Debtors are hereby authorized to pay the Breakup Fee pursuant to the procedures set forth in the Motion and in the Bidding Procedures, and the Breakup Fee is hereby approved.

8. The Assumption and Assignment Notice, substantially in the form attached hereto as **Exhibit 2**, is hereby approved and deemed sufficient for all purposes, and no other or further notice shall be required if the Trustee serves such notices in the manner provided in the Motion and this Order. The following Assumption and Assignment Procedures govern the assumption and assignment of the Assumed and Assigned Agreements in connection with the Sale of the Purchased Assets to the Successful Bidder:

- a. By no later than five (5) business days after entry of this Order, the Trustee will file a schedule (the “**Cure Schedule**”), which will be attached to the Assumption and Assignment Notice, identifying (a) the Assumed and Assigned Agreements, potentially to be assumed and assigned to the Staking Horse Bidder and (b) the amount, if any, the Minerals Debtors believe is necessary to cure all monetary defaults under such agreement pursuant to section 365 of the Bankruptcy Code (the “**Cure Costs**”).
- b. Upon the filing of the Cure Schedule, the Trustee will serve the Cure Schedule and the Assumption and Assignment Notice on each of the nondebtor counterparties listed on the Cure Schedule by first class mail. The Assumption and Assignment Notice will state that the Minerals Debtors are or may be seeking the assumption and assignment of the Assumed and Assigned Agreements and include (i) a description of each executory contract and unexpired lease that may be assumed and assigned in connection with the Sale, (ii) the deadline for objecting (a “**Cure/Assignment Objection**”) to the assumption and assignment of the applicable Assumed and Assigned Agreement, including to the amount of the proposed Cure Costs related to any such executory contract or unexpired lease, which deadline will be no later than three (3) business days prior to the Bid Deadline (the “**Cure/Assignment Objection Deadline**”) and (iii) the deadline for objecting (an “**Adequate Assurance Objection**”) to the ability of the relevant purchaser to provide adequate assurance of future performance under any Assumed and Assigned Agreement, which deadline shall be no less than one (1) day prior to the Sale Hearing (the “**Adequate Assurance Objection Deadline**” and collectively, the “**Cure/Adequate Assurance Objection Deadlines**”).

- c. Each Cure/Assignment Objection and/or Adequate Assurance Objection must be filed with the Bankruptcy Court and served on the following parties so as to be received no later than the applicable Cure/Adequate Assurance Objection Deadline: (1) Chapter 11 Trustee, Paul E. Harner, c/o Ballard Spahr LLP, 919 Third Avenue, 37th Floor, New York, NY 10022, Email: harnerp@ballardspahr.com; (2) Counsel to Trustee, Tobey M. Daluz, Ballard Spahr LLP, 919 N. Market Street, 11th Floor, Wilmington, DE 19801, Email: daluzt@ballardspahr.com and Vincent J. Marriott III, Ballard Spahr LLP, 1735 Market Street, 51st Floor, Philadelphia, PA 19103, Email: marriott@ballardspahr.com; (3) Eduardo Gonzalez and Alex Zyngier, Batuta Capital Advisors LLC, 475 Park Avenue South, Floor 12, New York, NY 10016, Email: egonzalez@batutaadvisors.com and azyngier@batutaadvisors.com; and (4) the Office of the United States Trustee, District of Delaware, J. Caleb Boggs Federal Building, 844 King Street, Suite 2207, Wilmington, Delaware 19801 (Attn: Linda J. Casey, Esq. and David L. Buchbinder, Esq.).
- d. If no objections are received with respect to any Assumed and Assigned Agreement, then the Cure Cost set forth in the Cure Schedule for such agreement will be binding upon the nondebtor counterparty to such agreement for all purposes and will constitute a final determination of the Cure Cost required to be paid by the applicable Minerals Debtor or Purchaser in connection with the assumption and assignment of such agreement. In addition, all counterparties to the Assumed and Assigned Agreements who fail to file an objection before the Cure/Adequate Assurance Objection Deadlines, as applicable, will be (i) forever barred from objecting to the Cure Costs or adequate assurance of future performance with respect to the Assumed and Assigned Agreements, and the Minerals Debtors and the purchaser(s) will be entitled to rely solely upon the Cure Cost set forth in the Cure Schedule; (ii) deemed to have consented to the assumption and assignment; and (iii) forever barred and estopped from asserting or claiming against the applicable Minerals Debtor(s) or the purchaser(s) that any additional amounts are due or other defaults exist, that conditions to assignment must be satisfied or that there is any other objection or defense to the assumptions or assignment of the applicable Assumed and Assigned Agreements.
- e. At any time prior to the Sale Hearing, the Successful Bidder may amend the Cure Schedule to (i) include any additional executory contract or unexpired lease thereon, or (ii) remove any executory contract or unexpired lease therefrom. The non-debtor party or parties to any such contract or lease will be notified of the inclusion or exclusion by written notice mailed within one (1) business day after such determination.
- f. Where a nondebtor counterparty to an Assumed and Assigned Agreement files a Cure/Assignment Objection asserting a cure amount higher than the

proposed Cure Cost (the “**Disputed Cure Amount**”), then (i) to the extent that the parties are able to consensually resolve the Disputed Cure Amount prior to the Sale Hearing, and subject to the applicable purchaser’s consent to such resolution, the parties shall amend the Cure Schedule, or (ii) to the extent the parties are unable to consensually resolve the dispute prior to the Sale Hearing, the amount to be paid under section 365 of the Bankruptcy Code with respect to such Disputed Cure Amount will be determined at the Sale Hearing or at such other date and time as may be fixed by the Court. The Trustee intends to cooperate with counterparties to Assumed and Assigned Agreements to attempt to reconcile any differences with respect to a particular Cure Cost. At any time prior to or after the Court’s ruling on the Disputed Cure Amount, the Trustee may remove such contract or lease from the list of Assumed and Assigned Agreements.

9. For the avoidance of doubt, the presence of an Assumed and Assigned Agreement on the Cure Schedule (a) does not constitute an admission that such Assumed and Assigned Agreement is an executory contract or unexpired lease and/or (b) shall not prevent the Trustee or any Successful Bidder from subsequently withdrawing from any proposed assumption and assignment, or rejecting such Assumed and Assigned Agreement at any time before such Assumed and Assigned Agreement is actually assumed and assigned pursuant to an order of the Court.

10. The Trustee shall provide or cause to be provided adequate assurance information regarding the Successful Bidder and Next Highest Bidder to the nondebtor counterparties to each Assumed and Assigned Agreement that may be assumed and assigned to such Successful Bidder or Next Highest Bidder upon request. Each of the nondebtor counterparties to the Assumed and Assigned Agreements who receive adequate assurance information in the form of voluntary disclosures or discovery from the Trustee or a proposed assignee regarding a proposed assignee shall keep the adequate assurance information confidential and only use or disclose the information as may be necessary to conduct due

diligence on the proposed assignee and/or object to a proposed assignment of the Assumed and Assigned Agreement.

11. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Order

Dated: \_\_\_\_\_, 2017  
Wilmington, Delaware

\_\_\_\_\_  
CHRISTOPHER S. SONTCHI  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT 1 TO BIDDING PROCEDURES ORDER**

**Bidding Procedures**

EXHIBIT 1 TO BIDDING  
PROCEDURES ORDER

**BIDDING PROCEDURES<sup>1</sup>**

By motion (the “Motion”) dated January 31, 2017, Paul E. Harner, as chapter 11 trustee (the “Trustee”) in the chapter 11 cases of MolyCorp Minerals, LLC, *et al.* (collectively, the “Minerals Debtors”), sought, among other things, approval of the process and procedures for soliciting bids for and obtaining approval of the sale (the “Sale Transaction”) of (i) certain surface and mineral rights associated with the Mountain Pass rare earth minerals mine, and (ii) the processing facility related thereto (the “Mountain Pass Mine”) located in San Bernardino County, California, and certain related assets (collectively, the “Purchased Assets”).

On February [ ] ,2017, the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) entered an order (the “Bidding Procedures Order”) that, among other things, authorized the Trustee to pursue the Sale Transaction through the bidding procedures set forth below (the “Bidding Procedures”).

A hearing by the Bankruptcy Court on the approval of the Sale Transaction is currently scheduled to begin on **March 30, 2016, at 10:00 a.m. (Eastern Time)** (the “Sale Hearing”).

**I. Important Dates and Contact Information**

The Trustee will:

- (A) assist any Potential Bidders (as defined below) in conducting their respective due diligence investigations and accept Qualified Bids (as defined below) until the deadline for receipt of Qualified Bids, which is **5:00 p.m. (Eastern Time) on March 17, 2017**;
- (B) negotiate with Qualified Bidders (as defined below) in preparation for an auction (the “Auction”) scheduled to begin at **10:00 a.m. (Eastern Time) on March 22, 2017**; and
- (C) select the Successful Bidder (as defined below) and seek authority to consummate the Sale Transaction with such Successful Bidder at the Sale Hearing to be held beginning at **10:00 a.m. (Eastern Time) on March 30, 2017**.

Information that must be provided to the “Notice Parties” under these Bidding Procedures must be provided to the following parties: (1) Chapter 11 Trustee, Paul E. Harner, c/o Ballard Spahr LLP, 919 Third Avenue, 37th Floor, New York, NY 10022, Email: harnerp@ballardspahr.com; (2) Counsel to Trustee, Tobey M. Daluz, Ballard Spahr LLP, 919 N. Market Street, 11th Floor, Wilmington, DE 19801, Email: daluzt@ballardspahr.com, and Vincent J. Marriott III, Ballard Spahr LLP, 1735 Market Street, 51st Floor, Philadelphia, PA 19103, Email: marriott@ballardspahr.com; and (3) the Trustee’s investment banker, Eduardo Gonzalez and Alex Zyngier, Batuta Capital Advisors LLC, 475 Park Avenue South, Floor 12,

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<sup>1</sup> Capitalized terms not otherwise defined herein have the meanings given to them in the Bidding Procedures Order (as defined below).

New York, NY 10016, Email: egonzalez@batutaadvisors.com and azyngier@batutaadvisors.com.

Further information on the Purchased Assets being offered for sale pursuant to these Bidding Procedures is available upon request from **the Trustee's investment banker, Batuta Capital Advisors LLC, ("Batuta"), 475 Park Avenue South, Floor 12, New York, NY 10016 (Attention: Alex Zyngier at azyngier@batutaadvisors.com).**

## **II. Stalking Horse Bidder**

The Minerals Debtors and the stalking horse bidder identified in the Motion (the "Stalking Horse Bidder") have agreed upon terms set forth in a Term Sheet for the Sale of the Purchased Assets (the "Term Sheet"). The Term Sheet contemplates the negotiation and execution of a definitive asset purchase agreement (the "Purchase Agreement") and its filing with the Court on or before **February 24, 2017**.

## **III. Participation Requirements**

Unless otherwise ordered by the Bankruptcy Court for cause shown, each interested person or entity (each, an "Interested Party") must deliver the following (unless previously delivered) to the Notice Parties so as to be received no later than **5:00 p.m. (Eastern Time) on March 10, 2017**:

- (A) an initial indication of interest ("IOI") that outlines the terms and proposed purchase price, subject to due diligence and definitive documentation, for the acquisition of the Purchased Assets;
- (B) an executed confidentiality agreement in form and substance reasonably satisfactory to the Trustee;
- (C) a statement and factual support demonstrating to the Trustee's reasonable satisfaction that the Interested Party has a bona fide interest in submitting a Permitted Bid; and
- (D) sufficient information to allow the Trustee, in his discretion, to determine that the Interested Party has the financial wherewithal and has obtained or is likely to obtain by the Auction Date all required internal corporate, legal or other authorizations to consummate the Sale Transaction, including, but not limited to, current audited financial statements of the Interested Party (or such other form of financial disclosure acceptable to the Trustee in his discretion).

If the Trustee determines that an Interested Party has timely complied with the requirements above, he will inform such Interested Party that it is a "Potential Bidder". For the avoidance of doubt, the Trustee expressly reserves the right to determine in his discretion that an Interested Party is not a Potential Bidder for any reason including, but not limited to the low price set forth in the IOI provided by such Party, or the concern that the Interested Party seeks confidential information to gain a competitive or litigation advantage over the Minerals Debtors. No later than two business days after the Trustee determines that an Interested Buyer is a

Potential Bidder, the Trustee will provide to such Potential Bidder: (A) an information package containing information and financial data, including the tax attributes, with respect to the Purchased Assets (the “Information Package”); (B) an electronic copy of the proposed form of asset purchase agreement (the “Proposed Agreement”), and (C) access to the confidential electronic data room (the “Data Room”). Once an Interested Party is deemed a Potential Bidder, the Debtors may disclose its identity to the Stalking Horse Bidder and other Potential Bidders.

#### **IV. Due Diligence**

Until the Bid Deadline (as defined below), in addition to access to the Data Room, the Trustee will provide any Potential Bidder with such due diligence access or additional information as may be reasonably requested by the Potential Bidder that the Trustee determines to be reasonable and appropriate under the circumstances. All due diligence requests shall be directed to Alex Zyngier at Batuta at azyngier@batutaadvisors.com. The Trustee, with the assistance of Batuta, will coordinate all reasonable requests for additional information and due diligence access from Potential Bidders. In the event that any such due diligence material is in written form and has not previously been provided to any other Potential Bidder, the Trustee will simultaneously provide such materials to the Stalking Horse Bidder and all Potential Bidders.

Unless otherwise determined by the Trustee, the availability of additional due diligence to a Potential Bidder will cease if (A) the Potential Bidder does not become a Qualified Bidder by the Bid Deadline, or (B) the bidding process is terminated. Except as provided above, neither the Trustee nor his representatives will be obligated to furnish any information of any kind whatsoever relating to the Purchased Assets to any party.

#### **V. Diligence Limitations With Respect to Commercially Sensitive Information**

To preserve the Minerals Debtors’ trade secrets or confidential research, or development or commercial information, the Trustee may limit the information provided to any Potential Bidder that is, in the Trustee’s reasonable judgment, a competitor of the Minerals Debtors, or where disclosure of such information would be harmful to the Sale Transaction. Such limitations may include the redaction of certain information or the establishment of access to information on a “professionals’ eyes only” basis. To the extent that the Trustee determines that any such limitation should be imposed, he will advise the relevant Potential Bidder of the extent of the limitation in writing.

#### **VI. Bid Deadline**

A Potential Bidder that desires to make a bid shall deliver written and electronic copies of its bid in both PDF and WORD format to the Notice Parties so as to be received no later than **5:00 p.m. (Eastern Time) on March 17, 2017 (the “Bid Deadline”).**

#### **VII. Form and Content of a Qualified Bid**

A bid is a signed document from a Potential Bidder that is accompanied by a good faith deposit in the amount of five percent (5%) of the proposed purchase price (the “Good Faith Deposit”) and that provides that:

- (A) the Potential Bidder offers to purchase the assets indicated in its bid and to assume related liabilities indicated in the bid at the purchase price and upon the terms and conditions set forth in the asset purchase agreement enclosed therewith, marked to show any proposed amendments and modifications to the Purchase Agreement, (the “Marked Agreement”);
- (B) the Potential Bidder will pay any cure costs arising from the assumption of any applicable executory contracts and/or unexpired leases;
- (C) the Potential Bidder has made or will make all necessary filings under applicable regulatory, antitrust and other laws, if applicable, and pay the fees associated with such filings;
- (D) the bid is formal, binding and unconditional (except for those conditions expressly set forth in the applicable Marked Agreement, including any conditions relating to the assumption and assignment of contracts and/or leases) and is not subject to any due diligence or financing contingency and is irrevocable until the first business day following the closing of the Sale;
- (E) the consideration set forth in such bid is higher or better than the consideration provided by the Stalking Horse Bidder, taking into account the Breakup Fee and Minimum Overbid (as defined below); and
- (F) the bidder (other than the Stalking Horse Bidder) is not entitled to any breakup fee, termination fee, expense reimbursement or similar type of payment or reimbursement and includes a waiver of any substantial contribution administrative expense claim under section 503(b) of the Bankruptcy Code related to the bid.

The Trustee will have the right to determine that a bid that satisfies all of the foregoing requirements is a “Qualified Bid” (and each Potential Bidder that has submitted a Qualified Bid will be considered a “Qualified Bidder”) if each of the following requirements has been met:

- (A) the bid is accompanied by: (i) except with respect to any collateral purchased solely pursuant to a credit bid, written evidence of available cash, a commitment for financing (not subject to any conditions other than those expressly set forth in the applicable Marked Agreement) and such other evidence of ability to consummate the contemplated Sale Transaction as the Trustee may reasonably request; (ii) a copy of a board resolution or similar document demonstrating the authority of the Potential Bidder to make a binding and irrevocable bid on the terms proposed; (iii) a covenant to cooperate with the Trustee to provide pertinent factual information regarding the Potential Bidder’s operations reasonably required to analyze issues arising with respect to any applicable antitrust laws and other applicable regulatory requirements; (iv) if the bid contains fewer or additional contingencies than contained in the Purchase Agreement, a detailed statement of such contingencies that have been added or removed, as applicable; and (v) a binding statement executed by a duly-authorized representative of such

Potential Bidder that such bid is irrevocable until the first business day following the closing of the Sale Transaction;

- (B) the bid (i) contemplates that the Potential Bidder, will (a) take transfer of, or obtain overlapping permits with respect to, the Minerals Debtors' applicable permits, and (b) provide the necessary financial assurances, including the posting of collateral or other security with respect thereto, that are associated with such permits; and (ii) provides evidence demonstrating to the Trustee that the Potential Bidder (y) is capable of taking transfer of such permits or obtaining such overlapping permits and (z) has available to it sufficient financial resources necessary to provide the financial assurances, including the posting of collateral or other security with respect thereto, that are required by such permits;
- (C) except with respect to any collateral purchased solely pursuant to a credit bid, the Potential Bidder transmits to the Trustee, by wire transfer, the Good Faith Deposit; or
- (D) if the bid includes a credit bid, such bid (i) describes with particularity the liens (and the Purchased Assets subject to such liens) that provide the basis for the credit bid; (ii) includes an allocation of the amount of the credit bid to the purchase price; and (iii) includes assumption of liability or other appropriate treatment of, or a cash component sufficient to pay in full, (1) all claims secured by liens on the relevant assets that are senior to those of the party seeking to credit bid, including any statutory or property tax liens accruing through the latest possible closing date for the Sale Transaction, (2) the Breakup Fee in the Purchase Agreement and (3) any cure costs and expenses that are required by law;
- (E) the terms of the bid are not materially more burdensome or conditional than the terms of the Purchase Agreement or any such increase in burdensomeness or conditionality is offset by a material increase in the purchase price, which determination may take into consideration:
  - (i) whether the bid requires any indemnification of the bidder on terms that are materially more burdensome than the terms of the Purchase Agreement, if applicable;
  - (ii) whether the bid does not provide sufficient cash consideration to pay transfer taxes, cure costs or other cash costs of the transaction (including the Breakup Fee);
  - (iii) any risks associated with regulatory approvals that may be required before such bid could be consummated; and
  - (iv) any other factors the Trustee may deem relevant.

If a bid is received and, in the Trustee's reasonable judgment, it is not clear whether the bid is a Qualified Bid, the Trustee shall consult with the Potential Bidder and seek additional information in an effort to establish whether or not such bid is a Qualified Bid.

For purposes hereof, the Stalking Horse Bidder shall be a Qualified Bidder and the Purchase Agreement shall be a Qualified Bid.

A Qualified Bid and any bids at the Auction may be valued by the Trustee based upon such factors as: (A) the value of the consideration provided in the Qualified Bid, including any benefit to the Minerals Debtors' bankruptcy estates from any assumption of liabilities, the satisfaction of liabilities through a credit bid and valuation of other non-cash consideration; (B) the net economic effect upon the Minerals Debtors' estates after the payment of the Breakup Fee, if applicable; (C) contingencies with respect to the applicable Sale Transaction and the likelihood of closing the proposed Sale Transaction without delay, and any incremental costs to the Minerals Debtors from any closing delays; (D) the ability to obtain any and all necessary antitrust and other regulatory approvals; and (E) any other factors the Trustee may deem relevant, including any costs and expenses that will need to be paid in order for the Trustee to propose and confirm a liquidating plan. The Trustee may, but shall not be required to, share copies of some or all of the Qualified Bids with other Qualified Bidders bidding on all or a portion of the same Purchased Assets (with such distribution permissible by electronic means, including posting to the Data Room). The Trustee reserves the right to impose additional terms and conditions with respect to what constitutes a Qualified Bid.

#### **VIII. Credit Bids**

Notwithstanding anything herein to the contrary, the holder of a lien on or security interest in all or a portion of the Purchased Assets shall have the right to seek to credit bid in connection with the sale of any of the Purchased Assets, and parties, including the Trustee, shall have the right to object to any such credit bid. Any such credit bid shall comply with the terms of these Bidding Procedures.

#### **IX. Auction**

If more than one Qualified Bid is received by the Bid Deadline, the Trustee will conduct the Auction. The Auction will take place at **10:00 a.m. (Eastern Time) on March 22, 2017**, at the offices of Ballard Spahr LLP, 1735 Market Street, 48th Floor, Philadelphia, PA 19103, or such other time as the Trustee may notify all Qualified Bidders. Only the Qualified Bidders who have submitted Qualified Bids will be eligible to participate at the Auction, subject to such limitations as the Trustee may impose in good faith.

The Trustee may select one Qualified Bid as the "Baseline Bid." At the Auction, participants will be permitted to increase their bids and bidding will start at the purchase price and other terms proposed in the Baseline Bid, and will proceed thereafter in increments of \$250,000 (the "Minimum Overbid"). The Trustee reserves the right to change any Minimum Overbid prior to or during the Auction.

The Stalking Horse Bidder will be entitled to a "credit" in the amount of the Breakup Fee to be counted towards its bid, such that the cash and other consideration proposed by the Stalking Horse Bidder plus the Breakup Fee must exceed the most recent bid by at least the Minimum Overbid.

The Trustee may adopt additional rules for the Auction at any time that the Trustee determines to be appropriate to promote the goals of the bidding process and that are not inconsistent with these Bidding Procedures. The identity of each bidder at the Auction will be fully disclosed to all other bidders and all material terms of each Qualified Bid submitted in response to the Baseline Bid or to any successive bids made at the Auction will be fully disclosed to all other bidders throughout the entire Auction, and each Qualified Bidder will be permitted what the Trustee determines to be an appropriate amount of time to respond to the previous bid at the Auction.

The Trustee reserves the right to, and may, reject at any time before entry of the Sale Order any bid that, in the Trustee's judgment, is: (A) inadequate or insufficient; (B) not in conformity with the requirements of the Bankruptcy Code, these Bidding Procedures or the terms and conditions of the Sale; or (C) contrary to the best interests of the Minerals Debtors and their estates. In doing so, the Trustee may take into account the factors set forth in the Bidding Procedures regarding the contents of a Qualified Bid.

Prior to the conclusion of the Auction, the Trustee will: (A) review and evaluate each bid made at the Auction and identify the highest or otherwise best offer (the "Successful Bid") and the next highest or otherwise best bid (the "Next Highest Bid"); and (B) notify all Qualified Bidders participating in the Auction, prior to its adjournment, of the identity of the party that submitted the Successful Bid (the "Successful Bidder"), the amount and other material terms of the Successful Bid, and the identity of the party that submitted the Next Highest Bid (the "Next Highest Bidder").

#### **X. Acceptance of Qualified Bids**

The Trustee's presentation of a Successful Bid to the Bankruptcy Court for approval does not constitute the Trustee's acceptance of such bid. The Trustee will be deemed to have accepted a Successful Bid only when such bid has been approved by the entry of the Sale Order.

If for any reason the Successful Bidder fails to consummate its purchase, the Trustee may proceed to a Sale Transaction with Next Highest Bidder as soon as is commercially reasonable. If such failure to consummate the purchase is the result of a breach by the Successful Bidder, the Trustee shall have the right to retain such Successful Bidder's Good Faith Deposit (unless required to return it by an order of the Bankruptcy Court) and shall reserve the right to seek all available additional damages from the Successful Bidder.

#### **XI. "As Is, Where Is"**

The Sale Transaction will be on an "as is, where is" basis and without representations or warranties of any kind, nature or description by the Trustee, the Minerals Debtors, their agents or the bankruptcy estates, whether written or verbal, whether express, implied or by operation of law, except and solely to the extent expressly set forth in the Purchase Agreement or Marked Agreement, as applicable, that is approved by the Bankruptcy Court and consummated. Each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Purchased Assets prior to making its bid, and that it has relied solely upon its own independent review and investigation in making its bid.

Except as otherwise provided in the Purchase Agreement, Marked Agreement or the Sale Order, all of the Minerals Debtors' right, title and interest in the relevant Purchased Assets shall be sold free and clear of liens, claims and encumbrances (collectively, "Liens"), with any Liens to attach to the proceeds of the Sale Transaction.

**XII. Modification of Bidding Procedures**

The Trustee may, amend the Bidding Procedures at any time and from time to time that he may determine will best promote the goals of the bidding process, including extending or modifying any of the dates set forth herein.

**XIII. Return of Good Faith Deposit**

The Good Faith Deposits of all Qualified Bidders, including the Stalking Horse Bidder, will be held by the Trustee in a deposit account and will not become property of the Minerals Debtors' bankruptcy estates unless released pursuant to further order of the Bankruptcy Court. The Trustee will retain the Good Faith Deposits of the Successful Bidder and the Next Highest Bidder until the closing of the Sale unless otherwise ordered by the Bankruptcy Court. The Good Faith Deposits of the other Qualified Bidders will be returned within five (5) business days of the entry of the Sale Order. At the closing of the Sale contemplated by the Successful Bid, the Successful Bidder will be entitled to a credit for the amount of its/their Good Faith Deposit. The Good Faith Deposit of the Next Highest Bidder will be released five (5) business days after the closing of the Sale.

**XIV. Reservation of Rights**

All rights to object to and seek Bankruptcy Court relief with respect to, any decision made by the Trustee pursuant to the Bidding Procedures, including on an expedited basis, are reserved.

**EXHIBIT 2 TO BIDDING PROCEDURES ORDER**

**Assumption and Assignment Notice**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

-----X  
In re: : Chapter 11  
: :  
: Case No. 15-11371 (CSS)  
: (Jointly Administered)  
MOLYCORP MINERALS, LLC, *et al.*,<sup>1</sup> :  
: **Re Docket No.**  
Debtors. :  
-----X

**NOTICE OF INTENT TO POTENTIALLY ASSUME AND ASSIGN  
CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**You are receiving this notice because you may be a counterparty to a contract or lease with Molycorp Minerals, LLC or one or more of its affiliated debtors (the “Minerals Debtors”). As set forth below, there are potential objection deadlines that may impact you. Please read this notice carefully as your rights may be affected by the transactions described herein.**

**PLEASE TAKE NOTICE** that on June 25, 2015 (the “Petition Date”), the Minerals Debtors and fifteen (15) of their affiliates (the “Plan Debtors”) commenced voluntary cases under chapter 11 of title 11 of the Bankruptcy Code in this Court.<sup>2</sup>

**PLEASE TAKE FURTHER NOTICE** that on April 8, 2016, this Court entered its *Findings of Fact, Conclusions of Law and Order Confirming the Plan Debtors’ Fourth Amended Plan of Reorganization* [Plan Debtors D.I. 1580] (the “Confirmation Order”) confirming the Plan Debtors’ Fourth Amended Joint Plan of Reorganization (the “Plan”) and approving certain related settlement agreements. Prior to entry of the Confirmation Order, however, the Plan was withdrawn as to the Minerals Debtors.

**PLEASE TAKE FURTHER NOTICE** that on May 2, 2016, pursuant to section 1104(a)(2) of the Bankruptcy Code, the United States Trustee appointed Paul E. Harner as the chapter 11 trustee of the Minerals Debtors (the “Trustee”).

<sup>1</sup> The Minerals Debtors are the following 6 entities (the last four digits of their respective taxpayer identification numbers, if any, follow in parentheses): Molycorp Minerals, LLC (4170); Industrial Minerals, LLC; Molycorp Advanced Water Technologies, LLC (1628); PP IV Mountain Pass, Inc. (1205); PP IV Mountain Pass II, Inc. (5361); and RCF IV Speedwagon Inc. (0845).

<sup>2</sup> The Plan Debtors are Molycorp, Inc.; Magnequench, Inc.; Magnequench International, Inc.; Magnequench Limited; MCP Calco ULC; MCP Canada Holdings ULC; MCP Canada Limited Partnership; MCP Exchangeco Inc.; Molycorp Chemicals & Oxides, Inc.; Molycorp Luxembourg Holdings S.a. r.l.; Molycorp Metals & Alloys, Inc.; Molycorp Minerals Canada ULC; Molycorp Rare Metals Holdings, Inc.; Molycorp Rare Metals (Utah), Inc.; and Neo International Corp.

**PLEASE TAKE FURTHER NOTICE** that on February [\_\_\_], 2017, the Bankruptcy Court entered an Order (A) Approving Bidding Procedures for the Sale of the Mountain Pass Mine and Certain Related Assets, (B) Approving a Breakup Fee Payable to the Stalking Horse Bidder, and (C) Approving Procedures for the Assumption and Assignment of Executory Contracts and Unexpired Leases [Docket No. [\_\_\_]] (the “Bidding Procedures Order”).<sup>3</sup> Among other things, the Bidding Procedures Order: (a) established certain procedures (the “Bidding Procedures”) for the sale (the “Sale”) of the Purchased Assets pursuant to an auction (the “Auction”) overseen by the Bankruptcy Court and (b) scheduled the time and place for the Auction. Approval of the Sale will take place at a hearing before the Bankruptcy Court scheduled for **March 30, 2017 at 10:00 a.m. (Eastern Time) (the “Sale Hearing”).**

**PLEASE TAKE FURTHER NOTICE** that, in accordance with the Bidding Procedures Order, the Minerals Debtors may potentially assume one or more of the executory contracts and unexpired leases listed on Annex 1 (collectively, the “Assumed Agreements” and each, an “Assumed Agreement”), pursuant to section 365 of the Bankruptcy Code.

**PLEASE TAKE FURTHER NOTICE** that the Trustee has indicated on Annex 1 attached hereto the cure amounts that the Minerals Debtors believe must be paid to cure all pre-petition defaults and pay all amounts accrued under the Assumed Agreements (in each instance, a “Cure Amount”).

**PLEASE TAKE FURTHER NOTICE** that any party seeking to object to the assumption and assignment/transfer to the Successful Bidder of any Assumed Agreement, including the validity of the Cure Amount, or otherwise assert that any other amounts, defaults, conditions or pecuniary losses must be cured or satisfied under any of the Assumed Agreements for such contract or lease to be assumed or assumed and assigned, must file an objection (the “Cure/Assignment Objection”) that (a) is in writing, (b) sets forth the specific monetary amount the objector asserts to be due, and the specific types of the alleged defaults, pecuniary losses, accrued amounts and conditions to assumption or assumption and assignment and the support therefor, (c) is filed with the Clerk of the Bankruptcy Court and (d) is served so as to be actually received **on or before 5:00 p.m. (Eastern Time) on March [\_\_\_], 2017 (the “Cure/Assignment Objection Deadline”)** by the following parties (collectively, the “Notice Parties”): (1) Chapter 11 Trustee, Paul E. Harner, c/o Ballard Spahr LLP, 919 Third Avenue, 37th Floor, New York, NY 10022, Email: harnerp@ballardspahr.com; (2) Counsel to Trustee, Tobey M. Daluz, Ballard Spahr LLP, 919 N. Market Street, 11th Floor, Wilmington, DE 19801, Email: daluzt@ballardspahr.com and Vincent J. Marriott III, Ballard Spahr LLP, 1735 Market Street, 51st Floor, Philadelphia, PA 19103, Email: marriott@ballardspahr.com; (3) Eduardo Gonzalez and Alex Zyngier, Batuta Capital Advisors LLC, 475 Park Avenue South, Floor 12, New York, NY 10016, Email: egonzalez@batutaadvisors.com and azyngier@batutaadvisors.com; and (4) the Office of the United States Trustee, District of Delaware, J. Caleb Boggs Federal Building, 844 King Street, Suite 2207, Wilmington, Delaware 19801 (Attn: Linda J. Casey, Esq. and David L. Buchbinder, Esq.).

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<sup>3</sup> Capitalized terms not otherwise defined herein have the meanings given to them in the Bidding Procedures Order.

**PLEASE TAKE FURTHER NOTICE** that any party seeking to object to the ability of the Successful Bidder to provide adequate assurance of future performance of an Assumed Agreement must file and serve an objection (the “Adequate Assurance Objection”) so that such objection is actually received by the Notice Parties **on or before 5:00 p.m. (Eastern Time) on March [\_\_\_], 2017 (the “Adequate Assurance Objection Deadline”)**. As set forth in the Bidding Procedures Order, following the conclusion of the Auction, the Trustee will file with the Bankruptcy Court copies of the Successful Bid and the Next Highest Bid.

**PLEASE TAKE FURTHER NOTICE** that, unless a Cure/Assignment Objection or Adequate Assurance Objection is filed and served before the applicable objection deadline, all parties shall (a) be forever barred from objecting to the Cure Amount or provision of adequate assurance of future performance and from asserting any additional cure or other amounts with respect to the Assumed Agreements, and the Trustee, the Minerals Debtors and the Successful Bidder, shall be entitled to rely solely upon the Cure Amount; (b) be deemed to have consented to the assumption or assumption and assignment; and (c) be forever barred and estopped from asserting or claiming defaults exist, that conditions to assignment must be satisfied under such Assumed Agreements or that there is any objection or defense to the assumption and assignment of such Assumed Agreements.

**PLEASE TAKE FURTHER NOTICE** that any hearings with respect to the Cure/Assignment Objections or Adequate Assurance Objections may be held (a) at the Sale Hearing or (b) at such other date as the Bankruptcy Court may designate upon request by the Trustee and the Successful Bidder. Where a nondebtor counterparty to an Assumed Agreement files an objection asserting a cure amount higher than the proposed Cure Amount (the “Disputed Cure Amount”), then (i) to the extent that the parties are able to consensually resolve the Disputed Cure Amount prior to the Sale Hearing, and subject to the applicable purchaser’s consent to such resolution, the parties shall amend the Cure Schedule, or (ii) to the extent the parties are unable to consensually resolve the dispute prior to the Sale Hearing, the amount to be paid under section 365 of the Bankruptcy Code with respect to such Disputed Cure Amount will be determined at the Sale Hearing or at such other date and time as may be fixed by the Court.

**PLEASE TAKE FURTHER NOTICE** that if you agree with the Cure Amount indicated on Annex 1 and otherwise do not object to the assumption or assumption and assignment of your lease or contract, you need not take any further action.

**PLEASE TAKE FURTHER NOTICE** that the assumption and assignment of the Assumed Agreements is subject to the approval of the Bankruptcy Court and the entry of the Sale Order.

**PLEASE TAKE FURTHER NOTICE** that inclusion of any document on the list of Assumed Agreements shall not constitute or be deemed to be a determination or admission by the Trustee, the Minerals Debtors, or the Successful Bidder that such document is, in fact, an executory contract or unexpired lease within the meaning of the Bankruptcy Code, and all rights with respect thereto are expressly reserved.

Dated: March \_\_\_, 2017  
Wilmington, Delaware

Respectfully submitted,

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Tobey M. Daluz (DE No. 3939)  
Matthew G. Summers (DE No. 5533)  
Leslie C. Heilman (DE No. 4716)  
Laurel D. Roglen (DE No. 5759)  
BALLARD SPAHR LLP  
919 N. Market Street, 11th Floor  
Wilmington, Delaware 19801  
Telephone: (302) 252-4428  
Facsimile: (302) 252-4466  
E-mail: [daluzt@ballardspahr.com](mailto:daluzt@ballardspahr.com)  
[summersm@ballardspahr.com](mailto:summersm@ballardspahr.com)  
[heilmanl@ballardspahr.com](mailto:heilmanl@ballardspahr.com)  
[roglenl@ballardspahr.com](mailto:roglenl@ballardspahr.com)

and

Vincent J. Marriott, III\*  
BALLARD SPAHR LLP  
1735 Market Street, 51st Floor  
Philadelphia, Pennsylvania 19103  
Telephone: (215) 864-8236  
Facsimile: (215) 864-9762  
E-mail: [marriott@ballardspahr.com](mailto:marriott@ballardspahr.com)  
(\*Admitted *Pro Hac Vice*)

*Counsel to the Chapter 11 Trustee*

**EXHIBIT B**

**TERM SHEET**

**MOLYCORP MINERALS, LLC****PROPOSED SALE OF MOUNTAIN PASS MINE****Summary of Principal Terms**

The following Summary of Principal Terms (this “Term Sheet”), dated January [●], 2017, represents certain terms for an acquisition through a sale (a “Sale”) of the assets specified below pursuant to Section 363 of Title 11 of the United States Code (the “Bankruptcy Code”). The transactions contemplated in this Term Sheet are referred to herein as the “Proposed Transaction.” This Term Sheet and any definitive documentation executed pursuant hereto is and will remain subject to the approval of the United States Bankruptcy Court (the “Bankruptcy Court”) presiding over the Chapter 11 cases (collectively, the “Bankruptcy Case”) of MolyCorp Minerals, LLC (the “Company”) and certain of its subsidiaries.

By executing this Term Sheet, the undersigned parties are expressing their intent to work towards the preparation, authorization, execution and delivery of the Purchase Agreement (as defined below) and to consummate the Proposed Transaction subject to, among others, the terms and conditions hereof.

***Summary of Terms***

<b>Sellers:</b>	The Company and certain of its subsidiaries (the “ <u>Sellers</u> ”), which are debtors and debtors in possession in the Bankruptcy Case.
<b>Purchaser:</b>	Rare Earth Global Partners (the “ <u>Purchaser</u> ”)
<b>Purchase Agreement</b>	Immediately upon execution of this Term Sheet, the parties will commence negotiating a definitive and binding asset purchase agreement (the “ <u>Purchase Agreement</u> ”). The Purchase Agreement will contain terms consistent with the terms of this Term Sheet and will contain other customary covenants, representations, warranties and closing conditions and such other terms and conditions as the parties shall agree.
<b>Purchased Assets:</b>	<p>Pursuant to the Purchase Agreement, the Purchaser will acquire only the following assets of the Sellers (the “<u>Purchased Assets</u>”) that are used or held for use in Sellers’ mining and processing operations located at its rare earth mineral mining facility located in Mountain Pass, California (the “<u>Mountain Pass Mine</u>”):</p> <ol style="list-style-type: none"> <li>1. the real property rights (whether surface or mineral) to the Mountain Pass Mine owned by the Sellers and all facilities and improvements</li> </ol>

	<p>thereto;</p> <ol style="list-style-type: none"> <li>all equipment and other tangible personal property owned by the Sellers located at the Mountain Pass Mine;</li> <li>all inventory and works in process used in the Sellers' mining and processing operations located at the Mountain Pass Mine;</li> <li>all of Sellers' rights under certain contracts applicable to its business at the Mountain Pass Mine to be identified on a schedule to the Purchase Agreement (collectively, the "<u>Assigned Contracts</u>"); and</li> <li>the Sellers' interests in any intellectual property rights exclusively relating to and used in connection with the Sellers' business at the Mountain Pass Mine.</li> </ol>
<b>Excluded Assets:</b>	<p>Sellers will retain all assets of Sellers other than the Purchased Assets, including:</p> <ol style="list-style-type: none"> <li>the Chlor-Alkali Plant;</li> <li>the PowerGen Facilities;</li> <li>the approximately two-acres of real property on which a convenience store is proposed to be located, the sale of which the Sellers are negotiating;</li> <li>any avoidance claims arising from or related to the Purchased Assets; and</li> <li>any insurance recovery or other claims arising from or relating to the leach tanks or the failure thereof located at the Mountain Pass Mine.</li> </ol>
<b>Assumed Liabilities:</b>	<p>Purchaser will assume the following liabilities and obligations of Sellers:</p> <ol style="list-style-type: none"> <li>liabilities related to the Purchased Assets arising on or after the closing date;</li> <li>cure amounts and other liabilities under the</li> </ol>

	<p>Assigned Contracts;</p> <ol style="list-style-type: none"> <li>3. ongoing environmental remediation liabilities and obligations relating to or associated with the Purchased Assets;</li> <li>4. all liabilities and obligations under any permits, licenses and other governmental or regulatory requirements relating to the Purchased Assets, including, without limited to, any surety obligations;</li> <li>5. transfer taxes; and</li> <li>6. other specified liabilities to be agreed upon by the parties.</li> </ol>
<b>Purchase Price:</b>	\$40 million, in cash, <i>plus</i> any amounts required to cure all costs and expenses associated with the assumption by the Purchaser of the Assigned Contracts, <i>plus</i> any transfer taxes arising from or in connection with the Proposed Transaction (collectively, the “ <u>Purchase Price</u> ”).
<b>Working Capital:</b>	The Purchased Assets shall be conveyed without working capital or other cash or cash equivalents of the Seller.
<b>Deposit:</b>	5% of the Purchase Price (the “ <u>Deposit</u> ”), which will be payable upon execution of the Purchase Agreement and will be applied toward the Purchase Price at closing.
<b>Bidding Procedures and Sale Motion:</b>	As soon as practicable after execution of the Purchase Agreement, the Sellers will file a motion with the Bankruptcy Court seeking approval of bidding procedures (“ <u>Bidding Procedures</u> ”) and the Sale with respect to the Proposed Transaction.
<b>Closing:</b>	The date on which the transactions contemplated by the Purchase Agreement closes, which will be no later than fourteen days following the entry of a sale order entered by the Bankruptcy Court.
<b>Liens and Encumbrances:</b>	All Purchased Assets will be transferred to Purchaser, pursuant to Section 363(f) of the Bankruptcy Code, free and clear of all claims, liens, encumbrances, interests and other restrictions of any kind or nature whatsoever. Any such liens existing at the time of the closing under the Purchase Agreement will attach to the sale proceeds according to their

	relative priorities, which proceeds will be held by the Sellers until the Bankruptcy Court orders, or the parties otherwise agree on, the allocation of the proceeds.
<b>"As Is, Where Is" Transaction:</b>	The Sale will be on an "as is, where is" basis and without representations or warranties of any kind, nature or description by the Trustee or the Sellers whether written or verbal, whether express, implied or by operation of law.
<b>Approvals:</b>	Except for the final approval of Purchaser's investment committee, which Purchaser will obtain within two business days of completion of its due diligence, there are no corporate or other approvals required to be obtained by Purchaser. Except for any consents required under any Assigned Contracts or by applicable law, no other approvals or consents are required for closing of the transactions contemplated by the Purchase Agreement.
<b>Closing Conditions:</b>	<p>Usual and customary closing conditions for transactions of this size and type (provided, that there will be no financing contingency of the Purchaser), including but not limited to:</p> <ol style="list-style-type: none"> <li>1. an agreement in principal with Oaktree regarding the sale or lease of certain equipment located at the Mountain Pass Mine; and</li> <li>2. license, lease, sale or other transfer of the mineral rights.</li> </ol>
<b>Employees:</b>	The Purchaser will offer employment, effective upon the closing, to all current employees primarily engaged in the Sellers' business at the Mountain Pass Mine. Such offers of employment will be on substantially similar terms and with substantially similar compensation and benefits as those to which such employees were entitled from Sellers as of immediately prior to the closing.
<b>Indemnification:</b>	The Purchase Agreement will not include any post-closing indemnification by Sellers.
<b>Termination; Break-Up Fee:</b>	Sellers may terminate the Purchase Agreement at any time following execution if: (i) the Bankruptcy Court has approved, or the Seller has consummated, a Competing Transaction (as defined below); or (ii) Sellers voluntarily terminate the Purchase Agreement or decline to close thereunder for any reason other than in connection with the Sellers' termination of the Purchase Agreement for a breach by the Purchaser. In the event of such termination, Sellers

	<p>will pay the Purchaser a fee equal to 4.5% of the Purchase Price (the "<u>Breakup Fee</u>").</p> <p>"<u>Competing Transaction</u>" means any of the following, other than the Proposed Transaction: (a) a plan of reorganization or other financial and/or corporate restructuring of Sellers that substantially prohibits or impairs the Proposed Transaction; (b) the sale or disposition by Sellers of all or a material portion of the Purchased Assets; (c) a merger, consolidation, business combination, liquidation or recapitalization of Sellers that substantially prohibits or impairs the Proposed Transaction.</p>
<b>Expenses:</b>	Each party will be responsible for its own out-of-pocket costs incurred in respect of the Proposed Transaction, including all fees and disbursements of legal, accounting, investment banking and other advisors and any brokers' or finders' fees.
<b>Remedies:</b>	<p>The Sellers will be entitled to retain the deposit upon any failure to close the Proposed Transaction as contemplated by the Purchase Agreement, other than as a result of a breach by Sellers. Sellers' sole remedy upon a termination of the Purchase Agreement as a result of a breach by Purchaser will be to retain the Deposit.</p> <p>Purchaser's sole remedy upon a termination of the Purchase Agreement as a result of a breach by Sellers will be the receipt of the Breakup Fee, and in such event, Sellers will return the Deposit to Purchaser.</p>
<b>Confidentiality:</b>	Sellers and Purchaser agree not to disclose the existence of this Term Sheet, the terms hereof or the existence or status of negotiations in connection herewith, except to such of their respective directors, officers, employees and agents who have a need to know in connection with the Proposed Transaction; provided, however, that the foregoing shall not prohibit any disclosure by Sellers to its principal creditors, the issuers of its surety bonds, or that is otherwise necessary to comply with applicable laws.
<b>Governing Law:</b>	The Term Sheet and the Purchase Agreement will be governed and construed in accordance with the laws of the State of Delaware, without regard to the conflict of laws rules thereof. The parties will irrevocably: (i) agree that any suit, action or other legal proceeding arising out of the Term Sheet and Purchase Agreement will be brought in the

	<p>United States Bankruptcy Court for the District of Delaware, (ii) consent to the jurisdiction of such court in any suit, action or proceeding, (iii) waive any objection which they, or any of them, may have to the laying of venue of any such suit, action or proceeding in such court, and (iv) agree that service of process by overnight courier or registered or certified mail, at the addresses specified herein or therein will be good and sufficient service of process. EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS TERM SHEET OR THE PURCHASE AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.</p>
<b>Non-Binding Agreement:</b>	<p>Except for this section and the “Expenses,” “Confidentiality,” and “Governing Law” sections of this Term Sheet, which are intended to be binding on the parties, it is understood and agreed that this Term Sheet is one of intent only and does not and is not intended to constitute a binding agreement with respect to the Proposed Transaction.</p>

*[signature page follows]*

**Exhibit 1**

**Timeline**

- Feb 6, 2017 Deadline to file Sale Motion;
- Feb 20, 2017 Deadline for payment of Deposit;
- Feb 20, 2017 Deadline for objections to the Bidding Procedures;
- Feb. 27, 2017 @ 11:00 a.m. Bidding Procedures hearing;
- March 3, 2017 Deadline for filing and service of the Assumption and Assignment Notice;
- March 3, 2017 Date of publication of the Auction and Confirmation Hearing Notice;
- March 13, 2017 Deadline for objections to the assumption and assignment of executory contracts and unexpired leases and cure amounts;
- March 17, 2017 Qualified Bids (as defined below) due with good faith Deposit, proof of financial ability to pay and mark-up of APA
- March 22, 2017 Auction (if necessary);
- March 23, 2017 Deadline for filing objections to the Sale;
- March 23, 2017 Deadline for objecting to the proposed assumption and assignment on adequate assurance grounds
- March 30, 2017 @ 10:00 a.m. Sale Hearing
- April 14, 2017 Deadline to Close