

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, *et al.*,¹ :
: : **Hearing Date (Bid and Other Procedures):**
: : **May 15, 2017 at 10:00 a.m. (ET)**
Debtors. : **Obj. Deadline (Bid and Other Procedures):**
: : **May 8, 2017 at 4:00 p.m. (ET)**
: : **Sale Hearing: June 23, 2017 at 2:00 p.m. (ET)**
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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 MINERALS DEBTORS’ BUSINESS 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 AN EXPENSE REIMBURSEMENT 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 within the United States as described in the Purchase Agreement (as defined below) (the “**Purchased Assets**”) to ERP Strategic Minerals, LLC, (the “**Stalking Horse**”

¹ 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, 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 an expense reimbursement (the “**Expense Reimbursement**”) payable to the Stalking Horse Bidder 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 sale of the assets of the Minerals Debtors associated with the rare earth minerals mine and processing facility (the “**Processing Facility**”) located in Mountain Pass, California (the “**Mountain Pass Mine**”) in order (a) to maximize the value of the Minerals Debtors’ estates for the benefit of all creditors, and (b) to achieve, if possible, maintenance of the Mountain Pass Mine as a going concern, to avoid triggering substantial environmental reclamation and remediation obligations.

2. In pursuit of both these objectives, the Trustee had originally hoped to orchestrate a “turnkey” sale of the Mountain Pass Mine. Following the severance and transfer to Secure Natural Resources, LLC (“**SNR**”) of certain mineral rights (the “**Mineral Rights**”) to the ore at the Mountain Pass Mine in April of 2016, pursuant to the *Order (A) Approving Asset Purchase*

Agreement, (B) Approving the Sale of Certain MolyCorp Minerals Assets to the Purchaser Free and Clear of All Liens, Claims, Encumbrances, and Other Interests Pursuant to Bankruptcy Code Sections 105(a), 363(b), (f), (k), and (m), (C) Approving Assumption and Assignment of Certain Executory Contracts Free and Clear of All Liens Claims, Encumbrances, and Other Interests Pursuant to Bankruptcy Code Sections 363 and 365, and (D) Granting Related Relief [Plan Debtors D.I. 1559], however, such a transaction became a three-legged stool, consisting of (a) the Mountain Pass Mine assets owned by the Minerals Debtors, including the surface rights and certain of the equipment associated with the Processing Facility, (b) the balance of the equipment associated with the Processing Facility, owned by OCM MLYCo CTB Ltd. (“**Oaktree**”) and leased to the Minerals Debtors (the “**Oaktree Equipment**”), and (c) the Mineral Rights, now owned by SNR. This three-legged stool lost one of its legs, however, at least insofar as a sale process conducted by the Trustee, when SNR entered into what has been represented to the Trustee is an “exclusive” arrangement with one of the potential bidders (not the Stalking Horse Bidder) for sale of the Mineral Rights. This renders a single turnkey sale to any other bidder impossible.

3. Nevertheless, following a comprehensive sales and marketing processes overseen by the Trustee, the Trustee has reached agreement with the Stalking Horse Bidder to acquire substantially all of the assets of the Minerals Debtors² associated with the Mountain Pass Mine, and to assume substantially all of the environmental obligations and liabilities, in each case as hereinafter more fully described, without any contingencies associated with acquisition by the Stalking Horse Bidder of the Oaktree Equipment or the Mineral Rights. It is the understanding

² For example, the Stalking Horse Bidder is not purchasing any of the Minerals Debtors’ assets outside of the United States, such as those located in Sri Lanka, which will remain property of the Minerals Debtors’ estates.

of the Trustee, however, that the Stalking Horse Bidder is in active discussions to acquire the Oaktree Equipment, and believes it can operate the Processing Facility without the Mineral Rights, if that ultimately proves necessary.³

4. 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:

- May 8, 2017 @ 4:00 p.m. Deadline for objections to the Bidding Procedures;
- May 15, 2017 @ 10:00 a.m. (ET) Bidding Procedures Hearing;
- May 19, 2017 Proposed deadline for filing and service of the Assumption and Assignment Notice;
- May 19, 2017 Date of publication of the notice of Auction;
- May 29, 2017 @ 4:00 p.m. 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;
- June 9, 2017 @ 4:00 p.m. Deadline for filing objections to the Sale;
- June 9, 2017 @ 4:00 p.m. Deadline for filing objections to the proposed assumption and assignment of executory contracts and unexpired leases on adequate assurance grounds;
- June 12, 2017 @ 5:00 p.m. Deadline for submitting Qualified Bids (as defined below) due with good faith Deposit, proof of financial ability to pay and mark-up of the Purchase Agreement;
- June 14, 2017 Auction to take place at the Philadelphia offices of Ballard Spahr LLP;

³ In this regard, the Stalking Horse Bidder may be uniquely situated. The “lock-up” of the Mineral Rights may well prove to be an insurmountable obstacle to other bidders.

- June 19, 2017 @ 4:00 p.m. Deadline to submit supplemental objections based solely on issues arising from the Auction;
- June 21, 2017 @ 4:00 p.m. Deadline for Trustee to file replies to objections
- June 23, 2017 @ 2:00 p.m. Sale Hearing;
- July 6, 2017 Proposed Closing Date.

GENERAL BACKGROUND

5. 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.⁴

6. 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. 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**”), with Oaktree as its controlling shareholder. Since the Plan Debtors’ Effective Date, neither NPM nor any of its affiliated entities hold an ownership interest in any of the Minerals Debtors.

7. 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.

⁴ 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.

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].

8. The principal assets of the Minerals Debtors are real property, surface rights and equipment associated with the Mountain Pass Mine and the Processing Facility. 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.

9. 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, 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, Oaktree, or an ad hoc group of certain holders of 10% senior notes secured by substantially all of the Estate Assets.

JURISDICTION AND VENUE

10. 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.

11. 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

12. 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. In addition, Batuta constructed a comprehensive financial model that detailed the potential to recommence operations against the backdrop of current commodity pricing.

13. 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 an Asset Purchase Agreement (the “**Purchase Agreement**”), an executed copy of which, without schedules and exhibits, is attached hereto at **Exhibit B**.

14. 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 (capitalized terms appearing in the following summary, to the extent not otherwise defined, have the meanings assigned to them in the Purchase Agreement):⁵

Purchaser:	The Stalking Horse Bidder or “ <u>Purchaser</u> ”
Sellers:	The Trustee, on behalf of the Minerals Debtors
Purchased Assets:	The Purchaser will acquire from the Minerals Debtors all of the Purchased Assets, including the following: <ol style="list-style-type: none"> 1. all real property owned by the Minerals Debtors (the “<u>Owned Real Property</u>”), as described in a

⁵ The description contained herein is summary in nature and qualified in all respects by the Purchase Agreement. In the event of any discrepancy between this description and the Purchase Agreement, the terms of the Purchase Agreement shall control. Capitalized terms used but not defined herein shall have the meanings assigned to them in the Purchase Agreement.

	<p>schedule to the Purchase Agreement;</p> <ol style="list-style-type: none"> 2. all Mineral Properties, including facilities, improvements, fixtures and other appurtenances thereto and rights in respect thereof owned by a Debtor or to which a Debtor has rights, including as described in <u>Schedule 2.1(b)(ii)</u> 3. the buildings, facilities, infrastructure, fixtures and improvements that are owned by a Mineral Debtor and located on the Owned Real Property or Mineral Properties; 4. all personal property, plants and equipment, machinery, heavy mobile equipment, forklifts and other warehouse equipment, vehicles, laboratory and testing equipment, samples, fixtures, furniture, furnishings, office equipment, computers and related computer hardware, information technology equipment and cabling, telecommunications equipment and cabling, leasehold improvements and other tangible personal property owned by a Minerals Debtor, wherever located, and whether or not located on or at the Owned Real Property or the Mineral Properties, including those set forth on a schedule to the Purchase Agreement; 5. all water rights, together with all wells and related equipment; 6. all drill core and core samples; 7. all supplies, spare parts and consumables; 8. all Permits, to the extent transferable; 9. all cash and cash collateral posted in respect of letters of credit, bonds, or Permits, including under bonds posted by Westchester Fire Insurance Company, Ironshore, Lexon and Bond Safeguard and as set forth on Schedule 2.1(b)(ix); 10. except as otherwise excluded, all deposits (including security deposits for rent, electricity, telephone, other utilities or otherwise) and all prepaid or deferred payables, charges and
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	<p>expenses (including for <i>ad valorem</i> taxes, leases and rentals), as set forth on schedules to the Purchase Agreement;</p> <ol style="list-style-type: none"> 11. all inventory, stock piles, tailings, raw materials, semi-finished goods, concentrates, work-in-process and finished goods that, as of the close of business on the Closing Date, are used or held for use in in connection with the Business and wherever located, whether or not located at the Owned Real Property or Mineral Properties; 12. all Intellectual Property Rights and any rights, causes of action and remedies for past, present and future infringements of any of the Intellectual Property Rights, including those listed on a schedule to the Purchase Agreement; 13. all specifications, drawings, plans, blueprints, diagrams, flow charts, engineering drawings and plans, design specifications, manufacturing data and information, processing and production manuals and procedures, operating instructions, user documentation, operating records, training materials, safety manuals, maintenance manuals and records, work papers, files, documents, papers, reports, photographs, letters, budgets, forecasts, title policies, customer lists, personnel files, data, reports, marketing, advertising and promotional materials, cost and pricing information, business plans, manuals, archives, research and development files, regulatory filings and data, information and data related to Permits, drill logs, assays, metallurgical test work, mine plans and similar information, agreements, and other documents, communications, books or records, whether in hard copy or computer or other format, related to the Business or the Purchased Assets, but excluding Retained Records (subject to the rights of Purchaser pursuant to a schedule to the Purchase Agreement); 14. all warranties, guarantees and similar rights, including warranties and guarantees made by suppliers, manufacturers and contractors, and claims against suppliers and other third parties,
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	<p>unless specifically set forth as an Excluded Asset;</p> <ol style="list-style-type: none"> 15. all rights to telephone numbers, facsimile numbers and email addresses; 16. the Contracts selected by the Purchaser to which any Minerals Debtor is a party that (A) are set forth on a certain schedule to the Purchase Agreement, and (B) are unexpired as of the Closing Date (including those Contracts that have been previously unexpired) (the “Purchased Contracts”); and 17. all goodwill associated with the business of any Minerals Debtor and/or the Purchased Assets.
<p>Assumed Liabilities:</p>	<p>Purchaser will assume the following liabilities and obligations of the Minerals Debtors:</p> <ol style="list-style-type: none"> 1. all Liabilities arising and accruing on or after the Closing from the ownership or operation of the Purchased Assets by Purchaser; 2. all Liabilities of the Debtors under the Purchased Contracts, including, without limitation, any Assumed Cure Costs, whether arising or accruing before, on or after the Closing; 3. all Environmental Liabilities, except for Excluded Pre-Closing Fines, whether arising or accruing before, on or after the Closing; 4. all Mining Liabilities, except for Excluded Pre-Closing Fines, whether or not arising or accruing before, on or after Closing; 5. any Transfer Taxes; and 6. all Liabilities to the extent specifically listed on a schedule to the Purchase Agreement.
<p>Purchase Price:</p>	<p>\$1.2 million, in cash, <i>plus</i> the assumption of the Assumed Liabilities (collectively, the “Purchase Price”).</p> <p>The Purchaser estimates the Assumed Liabilities in the maximum amount of approximately \$100 million.</p>

Deposit:	\$500,000 (the “ Deposit ”), which will be payable within three (3) days of execution of the Purchase Agreement and will be applied toward the Purchase Price at Closing.
Liens and Encumbrances:	Subject to the entry of the Sale Order, and pursuant to Section 363(f) of the Bankruptcy Code, at the Closing, Purchaser will be vested with good and valid title to the Purchased Assets, free and clear of all Liens (other than Permitted Exceptions) and Excluded Liabilities, to the fullest extent permissible under Law. Any 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 Trustee until the Bankruptcy Court orders, or the parties otherwise agree on, the allocation of the proceeds.
“As Is, Where Is” Transaction:	The Sale will be on an “ as is, where is ” basis and Purchaser acknowledges and agrees that the Trustee is not making any representations or warranties whatsoever, express or implied, beyond those expressly given by the Trustee in <u>Article V</u> of the Purchase Agreement (as modified by the Schedules).
Excluded Assets:	<p>Sellers will retain their interests in all assets other than the Purchased Assets, including:</p> <ol style="list-style-type: none"> 1. all cash and cash equivalents, other than cash collateral posted in respect of bonds and permits, including reclamation bonds, as set forth on a schedule to the Purchase Agreement; 2. all accounts receivable; 3. all rights, claims, causes of action and credits to the extent relating solely to any Excluded Asset or Excluded Liability, including any such item to the extent arising under any guarantee, warranty, indemnity or similar right in favor of a Minerals Debtor in respect of an Excluded Asset or Excluded Liability; 4. any shares of capital stock or other equity interest of any of the Minerals Debtors or any of their subsidiaries or any securities convertible into, exchangeable or exercisable for shares of capital stock or other equity interest of any of the Minerals Debtors or any of their

	<p>subsidiaries;</p> <ol style="list-style-type: none"> 5. any shares of capital stock or other equity interests of any third party held by any of the Minerals Debtors or any of their subsidiaries, including any securities convertible into, exchangeable or exercisable for shares of capital stock or other equity interests of any such third party; 6. all Retained Records, except that Purchaser will have the right to make copies of any portions of such Retained Records that relate to the Purchased Assets; 7. all claims and causes of action against any insurance carrier, contractor, or other third-party covering the failure in 2014 of certain of the Minerals Debtors' leach tanks; 8. all post-petition adequate assurance deposits provided to utilities and any deposits provided to suppliers or service providers to the Debtors on a pre-petition or post-petition basis unless specifically provided for under a Purchased Contract, in which case such deposit will be a Purchased Asset; 9. subject to <u>Section 2.7</u>, any Purchased Contract that requires the consent of a third party to be assumed and assigned hereunder as to which, by the Closing Date, such consent has not been obtained; 10. subject to <u>Section 8.6</u>, all of the Minerals Debtors' or the Trustee's insurance policies and rights thereunder, including all insurance proceeds or rights to insurance proceeds, in each case received or receivable by any Minerals Debtor or the Trustee; 11. all avoidance actions or similar causes of action arising under sections 544 through 553 of the Bankruptcy Code, including any proceeds thereof; 12. all refunds, credits and rebates of Taxes for any
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	<p>period or portion thereof prior to or ending on the Closing Date;</p> <p>13. all rights in or to assets leased by the Minerals Debtors except to the extent such lease is assigned to Purchaser as a Purchased Contract; and</p> <p>14. notwithstanding anything in the Purchase Agreement, any assets or properties of the Minerals Debtors or any of their subsidiaries outside of the United States.</p>
Employees:	No Minerals Debtor has employees.
Closing Conditions:	<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> <p>1. all Permits in force and effect as of the date of the Purchase Agreement shall be in force and effect and sold, transferred and assigned (to the extent transferable) to, or renewed or amended in the name of Purchaser, without any material modification; and</p> <p>2. the Purchaser shall have reached mutually acceptable agreements with the Minerals Debtors' surety companies and other bond and letter of credit providers, including Westchester Fire Insurance Company, Ironshore, Lexon and Bond Safeguard, concerning existing bonds and letters of credit, which shall include their consensual release of cash collateral under bonds posted by such surety companies to Purchaser.</p>
Approvals:	There are no corporate or other approvals required to be obtained by Purchaser. Except for any consents required under any Purchased Contract or by applicable law or Governmental Body, no other approvals or consents are required for closing of the transactions contemplated by the Purchase Agreement other than approval by the Bankruptcy Court.
Termination; Expense	Upon the closing of a Competing Transaction (as defined below) and on the terms and expressly subject to the

Reimbursement:	<p>conditions precedent set forth in the Bidding Procedures Order, the Trustee shall reimburse, or cause to be reimbursed to, Purchaser all of Purchaser's expenses, including reasonable attorneys' fees, incurred by it in connection with its entry into the Purchase Agreement in an amount not to exceed \$150,000 ("<u>Expense Reimbursement</u>")</p> <p><u>"Competing Transaction"</u> means any of the following transactions, other than the Transaction, with one or more Persons, other than Purchaser: (i) a plan of reorganization or other financial and/or corporate restructuring of the Minerals Debtors or a material portion of their assets that substantially prohibits or impairs the Transaction; (ii) the sale or disposition of all or a material portion of the Purchased Assets to one or more Persons other than Purchaser; (iii) Purchaser is not the successful bidder in any auction conducted to sell the Purchased Assets pursuant to the Bankruptcy Case and the Bankruptcy Court approves another bidder; or (iv) merger, consolidation, business combination, or recapitalization of the Minerals Debtors that substantially prohibits or impairs the Transaction.</p>
Expenses:	<p>Except as otherwise expressly provided in the Purchase Agreement, whether or not the Transaction is consummated, each of the Trustee and Purchaser will bear its own expenses incurred in connection with the negotiation and execution of this Agreement and the Transaction Documents and the consummation of the Transaction and all proceedings incident thereto.</p>
Remedies:	<p>The Minerals Debtors will be entitled to retain the Deposit Amount if the Closing has not occurred by the Termination Date due to a breach, under the standards set forth in the applicable Section on termination, of any representations, warranties, covenants or agreements contained in the Purchase Agreement by Purchaser.</p> <p>Upon the Closing of a Competing Transaction, Purchaser will receive the Expense Reimbursement, and in such event, Sellers will return the Deposit to Purchaser.</p>
Closing Date:	<p>The date on which the transactions contemplated by the Purchase Agreement close, which will be no later than five (5) Business Days following the satisfaction or waiver of the conditions to Closing.</p>

15. 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 Purchase Agreement.

<p><u>Bid Deadline:</u></p>	<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 5:00 p.m. (Eastern Time) on June 12, 2017 (the “<u>Bid Deadline</u>”).</p> <p>Bids and other information that must be provided to the “<u>Notice Parties</u>” 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;</p> <p>(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) Counsel to the Stalking Horse Bidder, Oscar N. Pinkas, Dentons US LLP, 1221 Avenue of the Americas, New York, NY 10020, Email: oscar.pinkas@dentons.com, and Justin R. Alberto, Bayard, P.A., 222 Delaware Avenue, Suite 900, Wilmington, DE 19899, Email: jalberto@bayardlaw.com.</p>
<p><u>Form and Content of a Qualified Bid:</u></p>	<p>A qualified bid (a “<u>Qualified Bid</u>”) is a signed document from a potential bidder (a “<u>Potential Bidder</u>”) that is accompanied by a good faith deposit in the amount of ten percent (10%) of the proposed purchase price (the “<u>Good Faith Deposit</u>”) and that provides that:</p> <ol style="list-style-type: none"> 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

	<p>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”);</p> <ol style="list-style-type: none"> 2. the Potential Bidder will pay any cure costs arising from the assumption of any applicable executory contracts and/or unexpired leases; 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; 4. the Potential Bidder will take assignment and transfer of all of the Minerals Debtors’ permits and licenses, and will assume all of the liabilities of the Minerals Debtors under environmental or mining laws; 5. 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; provided that any bid that is contingent on acquisition of the Oaktree Equipment or the Mineral Rights shall not be considered a Qualified Bid) 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; 6. the consideration set forth in such bid is higher or better than the consideration provided by the Stalking Horse Bidder, taking into account the Expense Reimbursement and Minimum Overbid (as defined below); and 7. 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.
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<p><u>Auction:</u></p>	<p>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 June 14, 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 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 for all purposes.</p>
<p><u>Minimum Overbid:</u></p>	<p>The Trustee may select one Qualified Bid as the “<u>Baseline Bid.</u>” At the Auction, participants will be permitted to increase their bids and bidding will start at the purchase price, plus the Expense Reimbursement for the Stalking Horse Bidder, plus \$50,000, and other terms proposed in the Baseline Bid, and will proceed thereafter in increments of \$50,000 (the “<u>Minimum Overbid</u>”). 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 Expense Reimbursement to be counted towards its bid(s), such that the cash and other consideration proposed by the Stalking Horse Bidder plus the Expense Reimbursement must exceed the most recent bid by at least the Minimum Overbid.</p>
<p><u>Additional Rules for Auction:</u></p>	<p>The Trustee may adopt additional rules not inconsistent with those set forth herein 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 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 “<u>Sale Order</u>”) any bid (other than a bid put forth by the Stalking</p>

	<p>Horse Bidder) 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>
<u>Selection of Successful Bid:</u>	<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 “<u>Successful Bid</u>”) and the next highest or otherwise best bid (the “<u>Next Highest Bid</u>”); 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 “<u>Successful Bidder</u>”), the amount and other material terms of the Successful Bid, and the identity of the party that submitted the Next Highest Bid (the “<u>Next Highest Bidder</u>”).</p>
<u>Acceptance of Qualified Bids:</u>	<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. 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 unless the Marked Agreement otherwise provides.</p>
<u>Return of Deposits:</u>	<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 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</p>

	<p>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.</p>
<p><u>“As Is, Where Is”:</u></p>	<p>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, 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 expressly 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.</p>
<p><u>Modification to Bidding Procedures:</u></p>	<p>The Trustee may, amend the Bidding Procedures in a manner not inconsistent with the foregoing 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 (except that prior to the Auction, any such amendment shall require the consent of the Stalking Horse Bidder).</p>

16. 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

17. 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 Expense Reimbursement 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.

18. *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

19. 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.”).

20. 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”).

21. 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.

22. 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 Expense Reimbursement to the Stalking Horse Bidder

23. As part of the Bidding Procedures Order, the Trustee is also requesting authority to enter, if applicable, into the Purchase Agreement and to pay the Expense Reimbursement to such Stalking Horse Bidder. The Expense Reimbursement is designed to compensate the Stalking Horse Bidder for the substantial investment of time and a significant commitment of resources necessary to negotiate and prepare the Transaction Documents, this motion, the Bidding Procedures Order, and the Sale Order. If approved by this Court, the Trustee would be

authorized to pay the Stalking Horse Bidder an Expense Reimbursement of up to \$150,000. The Expense Reimbursement 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 Expense Reimbursement and Minimum Overbid, and include sufficient cash consideration to pay the Expense Reimbursement in full at closing.

24. Approval of expense reimbursements 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 Del. & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991); *In re Exaeris, Inc.*, 380 B.R. 741, 744 (Bankr. D. Del. 2008).

25. 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, expense reimbursements 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.*

26. 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 Expense Reimbursement, the Trustee was able to incentivize the Stalking Horse Bidder to undertake those costs and make an initial bid for the Purchased Assets which 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 Expense Reimbursement 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, especially in light of the Stalking Horse Bidder’s agreement to close without the Oaktree Equipment or Mining Rights. 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 Expense Reimbursement will enable him to obtain the greatest benefit to the estate from the sale of the Purchased Assets.

27. Moreover, payment of the Expense Reimbursement 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 Expense Reimbursement, 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 Expense Reimbursement in full at closing.

28. Accordingly, the Expense Reimbursement 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

29. 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; (4) Counsel to the Stalking Horse Bidder, Oscar N. Pinkas, Dentons US LLP, 1221 Avenue of the Americas, New York, NY 10020, Email: oscar.pinkas@dentons.com, and Justin R. Alberto, Bayard, P.A., 222 Delaware Avenue, Suite 900, Wilmington, DE 19899, Email: jalberto@bayardlaw.com; and (5) 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) or their assets 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 closing of the Purchase Agreement, the Successful Bidder may amend the list of Assumed and Assigned Agreements and 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 agreed to by the Trustee and Purchaser and 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, with the Successful Bidder’s consent, may remove such contract or lease from the list of Assumed and Assigned Agreements.

30. 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

31. 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").

32. 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).

33. 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. May 20, 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).

34. Central to the Trustee's proposed sale of Purchased Assets of the Minerals Debtors is the ability to operate the Business 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

35. 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, 176 (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).

36. 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

37. 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).

38. 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).

39. 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. *Michigan Emp’t Sec. Comm’n v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1147 n.24 (6th Cir. 1991); *In re Dundee Equity Corp.*, Case No. 89-B-10233, 1992 Bankr. LEXIS 436, at *12 (Bankr. S.D.N.Y. Mar. 6, 1992); *In re Bygaph, Inc.*, 56 B.R. 596, 606 n.8 (Bankr. S.D.N.Y. 1986).

40. 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

41. 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.*, 92 Civ. 7054 (PKL), 1993 U.S. Dist. LEXIS 6130, at *9 (S.D.N.Y. May 10, 1993) (quoting *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d at 147).

42. 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 Pa., 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 Tech. Corp.*, 202 B.R. 363, 370 (D. Del. 1996) (rejecting good faith challenge by unsecured creditors at sale hearing).

43. 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.

D. The Successful Bidder is Entitled to the Protections Afforded under Section 363(n) of the Bankruptcy Code

44. The Trustee submits that the purchase price of the Successful Bid was not controlled by any agreement among potential bidders and that neither the Trustee or the Minerals Debtors, nor the purchaser engaged in collusion or any other conduct that would cause or permit the transactions to be avoidable under section 363(n) of the Bankruptcy Code. The Court's order approving the sale should, therefore, hold that the transactions may not be avoided and no party shall be entitled to damages or other recovery pursuant to Section 363(n) of the Bankruptcy Code.

E. The Successful Bidder is Entitled to Tax Exemptions

45. The Trustee and the Minerals Debtors assert that any laws regarding bulk sales, or similar laws, are not applicable to the sale of Purchased Assets. In addition, the Trustee and the Minerals Debtors believe that because the assignment, transfer and/or sale of the Purchased Assets: (i) is in exchange for the Purchase Price, no withholding of U.S. federal income tax pursuant to sections 1441 or 1442 of the Internal Revenue Code is required, and (ii) constitutes an occasional sale, it is exempt from sales and use tax.

NOTICE

46. 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. Notice of this Motion will be provided to any person or entity that has an interest in the Purchased Assets or a recovery

from one of the Minerals Debtors' bankruptcy estates, including, but not limited to, all creditors of the Mineral Debtors as reflected on the claims register or in one of their schedules filed as the outset of these cases. The Trustee submits that, under the circumstances, no other or further notice is required.

NO PRIOR REQUEST

47. 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)

48. 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: April 24, 2017
Wilmington, Delaware

Respectfully submitted,

/s/ Tobey M. Daluz
Tobey M. Daluz (DE No. 3939)
Matthew G. Summers (DE No. 5533)
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and

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(*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> , ¹	:	
Debtors.	:	Re Docket No. ____
	X	

**ORDER (A) APPROVING BIDDING PROCEDURES FOR THE SALE OF THE
MINERALS DEBTORS’ BUSINESS AND CERTAIN RELATED ASSETS,
(B) APPROVING AN EXPENSE REIMBURSEMENT 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 Minerals Debtors’ Business and Certain Related Assets, (B) Approving an Expense Reimbursement 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**”),² 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

¹ 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).

² 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.

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. §§ 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, as modified herein, 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. For the avoidance of doubt, the Purchased Assets do not include, and the Bidding Procedures do not apply to, assets located at or held for use in connection with the business operated at Mountain Pass that are owned by third parties, including (i) the equipment owned by Oaktree Capital Management, L.P. and leased to Molycorp Minerals, and (ii) the mineral and subsurface rights owned by Secure Natural Resources LLC.

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, Notice Parties 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 2:00 p.m. (Eastern Time) on June 23, 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. The Sale 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 and publishes such notice in the manner provided in the Motion.

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 Expense Reimbursement as set forth in the Purchase Agreement, and the Expense Reimbursement is hereby approved.

8. The Assumption and Assignment Notice, substantially in the form attached hereto as **Exhibit 3**, 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) Counsel to the Stalking Horse Bidder, Oscar N. Pinkas, Dentons US LLP, 1221 Avenue of the Americas, New York, NY 10020, Email: oscar.pinkas@dentons.com, and Justin R. Alberto, Bayard, P.A., 222 Delaware Avenue, Suite 900, Wilmington, DE 19899, Email: jalberto@bayardlaw.com; and (5) 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) or their assets 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 closing of the Purchase Agreement, the Successful Bidder may amend the list of assumption and Assignment Agreements and 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 agreed to by the Trustee and Purchaser and 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, with the Successful Bidder’s consent, 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. To the extent any Interested Party intends to seek to assume the obligations of the Minerals Debtors under any existing surety bonds, the Trustee shall provide to counsel for the sureties (Ironshore Indemnity, Inc., Lexon Insurance Co., Bond Safeguard Insurance Co. and Westchester Fire Insurance Company) the information delivered to the Trustee pursuant to paragraph III (F) of the attached Bidding Procedures.

12. 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 PROCEDURES¹

By motion (the “**Motion**”) dated April 24, 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 certain assets owned by the Minerals Debtors associated with the Mountain Pass rare earth minerals mine (the “**Mountain Pass Mine**”) located in San Bernardino County, California, and certain related assets (collectively, the “**Purchased Assets**”) free and clear of all claims, liens, encumbrances, and other interests (collectively, the “**Liens**”), provided that any and all Liens will attach to the proceeds of the Sale Transaction according to their relative priorities.

On May [] ,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**”).

The Sale Transaction shall be subject to approval of the Bankruptcy Court. A hearing by the Bankruptcy Court on the approval of the Sale Transaction is currently scheduled to begin on **June 23, 2017, at 2:00 p.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 June 12, 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 June 14, 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 **2:00 p.m. (Eastern Time) on June 23, 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

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

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, New York, NY 10016, Email: egonzalez@batutaadvisors.com and azyngier@batutaadvisors.com; and (4) Counsel to the Stalking Horse Bidder, Oscar N. Pinkas, Dentons US LLP, 1221 Avenue of the Americas, New York, NY 10020, Email: oscar.pinkas@dentons.com, and Justin R. Alberto, Bayard, P.A., 222 Delaware Avenue, Suite 900, Wilmington, DE 19899, Email: jalberto@bayardlaw.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).**

For the avoidance of doubt, consultation rights afforded to the Notice Parties hereunder shall not be extended to any person or entity that submits a bid or otherwise elects to participate in accordance with paragraph III below.

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 an asset purchase agreement for the Sale of the Purchased Assets (the "**Purchase Agreement**").

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 Trustee, counsel for the Trustee and Batuta:

- (A) an initial indication of interest ("**IOI**") that outlines the terms and proposed purchase price, subject to due diligence and definitive documentation, and any material contingencies or approvals for the acquisition of the Purchased Assets; and
- (B) an executed confidentiality agreement in form and substance reasonably satisfactory to the Trustee.

Upon receipt of the above, the Trustee shall make the information delivered by each Interested Party available to all Notice Parties. For the avoidance of doubt, the Trustee shall be under no obligation to provide any information delivered by an Interested Party to any Notice Party who has submitted an IOI and may otherwise qualify as an Interested Party or Potential Bidder (as defined below).

Upon receipt of the above, the Trustee 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 Interested 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 Party 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 Trustee, counsel for the Trustee and Batuta, so as to be received no later than **5:00 p.m. (Eastern Time) on June 12, 2017 (the “**Bid Deadline**”)**. Upon receipt of the bids, the Trustee shall make them available to all Notice Parties (except that the Trustee shall be under no obligation to provide the bids to any Notice Party who is also a Potential Bidder).

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 (the “**Good Faith Deposit**”) in the amount of ten percent (10%) of the proposed purchase price (excluding the portion of the purchase price payable through a credit bid) and that provides that:

- (A) the Potential Bidder offers to purchase the assets, and to assume liabilities, specifically identified 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 Potential Bidder will take assignment and transfer of all of the Minerals Debtors’ permits and licenses, and will assume all of the liabilities of the Minerals Debtors under environmental or mining laws;
- (E) 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 Transaction;
- (F) the consideration set forth in such bid is higher or otherwise better than the consideration provided by the Stalking Horse Bidder, taking into account the Expense Reimbursement and Minimum Overbid (as defined below);
- (G) the bid is not contingent on reaching an agreement with Oaktree with respect to certain equipment owned by Oaktree located at the Mountain Pass Mine or an agreement with Secure Natural Resources (“**SNR**”) with respect to the mineral rights; and
- (H) 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:

1. the bid is accompanied by: (a) except with respect to any Purchased Assets 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; (b) a copy of the board resolution or similar document demonstrating the authority of the Potential Bidder to make a binding and irrevocable bid on the terms proposed; (c) 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; (d) 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 (e) 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;
2. the bid (a) contemplates that the Potential Bidder, will (i) take transfer of, or obtain overlapping permits with respect to, the Minerals Debtors' applicable permits, and (ii) provide the necessary financial assurances and commitments, including the commitment to replace and post additional collateral or other security, as necessary, with respect to the Mineral Debtors' applicable permits; and (b) 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;
3. except with respect to any Purchased Assets purchased solely pursuant to a credit bid, the Potential Bidder transmits to the Trustee, by wire transfer, the Good Faith Deposit;
4. without limiting the other requirements set forth herein, if the bid includes a credit bid, such bid (a) describes with particularity the liens (and the Purchased Assets subject to such liens) that provide the basis for the credit bid; (b) includes an allocation of the amount of the credit bid to the purchase price; and (c) includes assumption of liability or other appropriate treatment of, or a cash component sufficient to pay in full, (i) 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, (ii) the Expense Reimbursement in the Purchase Agreement, and (iii) any cure costs and expenses that are required by law; or
5. 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:

- (a) 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;
- (b) whether the bid does not provide sufficient cash consideration to pay transfer taxes, cure costs or other cash costs of the transaction (including the Expense Reimbursement);
- (c) any risks associated with regulatory approvals that may be required before such bid could be consummated; and
- (d) 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 for all purposes.

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 Expense Reimbursement, 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 the applicable 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 in all respects.

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 June 14, 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**.” Information with respect to the Baseline Bid will be provided to the following additional secured parties: (1) counsel to Oaktree, Milbank Tweed Hadley & McCloy LLP, 28 Liberty Street, New York, New York 10005 (Attn: Andrew M. Leblanc, Esq. and Lauren Doyle, Esq.) and at aleblanc@milbank.com and ldoyle@milbank.com; and (2) Counsel to the Ad Hoc 10% Noteholders, Bryan Krakauer and Matthew Clemente, Sidley Austin LLP, 1 South Dearborn Street, Chicago, IL 60603, Email: bkrakauer@sidley.com and mclemente@sidley.com

At the Auction, participants will be permitted to increase their bids and bidding will start at the purchase price, plus the Expense Reimbursement, plus \$50,000, and other terms proposed in the Baseline Bid, and will proceed thereafter in increments of \$50,000 (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 Expense Reimbursement to be counted towards its bid(s), such that the cash and other consideration proposed by the Stalking Horse Bidder plus the Expense Reimbursement must exceed the most recent bid by at least the Minimum Overbid.

The Trustee may adopt additional rules not inconsistent with those set forth herein for the Auction in consultation with the Notice Parties 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 the Notice Parties and 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 (other than a bid put forth by the Stalking Horse Bidder) 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 Transaction; 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**”) and the identity of the party that

submitted the Next Highest Bid (the “**Next Highest Bidder**”), as well as the amount and other material terms of the Successful Bid and the Next Highest Bid.

X. Acceptance of Qualified Bids

The Trustee’s presentation of the 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 the 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 the Next Highest Bidder without additional court approval 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 expressly 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, with any Liens to attach to the proceeds of the Sale Transaction in the same order of priority as they attached to the Purchased Assets.

XII. Modification of Bidding Procedures

The Trustee may, in consultation with the Notice Parties, amend the Bidding Procedures in a manner not inconsistent with the foregoing 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 (except that, prior to the Auction, any such amendment shall require the consent of the Stalking Horse Bidder).

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. The Trustee will retain the Good Faith Deposits of the Successful Bidder and the Next Highest Bidder until the closing of the Sale Transaction 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 Transaction with the Successful Bidder, the Successful Bidder will be entitled to a credit for the amount of its 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 Transaction.

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

Sale 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.*,¹ :
 : **Re Docket No.**
 Debtors. :
 -----X

**NOTICE OF SALE AND SOLICITATION OF BIDS TO PURCHASE CERTAIN OF
THE MINERALS DEBTORS’ ASSETS AND TERMS AND CONDITIONS
RELATED TO BIDDING PROCEDURES**

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. On April 24, 2017, Paul E. Harner as the chapter 11 trustee (the “**Trustee**”) of the above-captioned debtors (the “**Minerals Debtors**”) filed a motion [D.I. ____] (the “**Sale Motion**”) with the United States Bankruptcy Court for the District of Delaware requesting authority to sell (the “**Sale**”) certain of the Minerals Debtors’ assets (the “**Assets**”) to the proposed stalking horse purchaser (the “**Stalking Horse Bidder**”) (or another successful bidder(s) (the “**Successful Bidder**”) at an auction) free and clear of all liens, claims, interests, or encumbrances thereon, with all such interests in the Purchased Assets to be transferred, and attach, to the proceeds of the Sale(s) with the same validity and priority (except for the assumed liabilities specifically described in the agreement governed the Sale to the Stalking Horse Bidder (the “**Purchase Agreement**”). You may obtain a copy of the Sale Motion and the Purchase Agreement by (a) sending a written request to the Trustee’s counsel, Tobey M. Daluz, Ballard

¹ 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).

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; or (b) accessing the website maintained by the Minerals Debtors' claims and noticing agent, Prime Clerk LLC, at <http://cases.primeclerk.com/molycorpm minerals>.

2. The Minerals Debtors are soliciting offers for the purchase of the Assets. And the Bankruptcy Court entered an order (the "**Bidding Procedures Order**") approving the auction and sale procedures (the "**Bidding Procedures**") for the Assets.² Capitalized terms not otherwise defined herein have the meanings assigned to them in the Bidding Procedures Order or the Bidding Procedures.

3. The Trustee and the Stalking Horse Bidder (or another Successful Bidder) will seek an order from the Bankruptcy Court stating that the Stalking Horse Bidder (or other Successful Bidder) is not liable for certain claims related to or connected with the Assets that arose or could have arisen prior to Closing, including, but not limited to any claims against the Minerals Debtors or any of their predecessors or affiliates, or any claims for successor or vicarious liability of any kind or character whether known or unknown as of the Closing of the Sale, whether now existing or hereafter arising, or whether fixed or contingent, with respect to the Assets or any obligation of the Minerals Debtors arising prior to the Closing of the Sale, except as provided for in the Purchase Agreement, including, but not limited to, liabilities on account of any taxes arising, accruing, or payable under, out of, or in connection with, or in any way relating to the Assets prior to the Closing of the Sale.

² A copy of the Bidding Procedures Order is attached hereto as Exhibit A.

4. All interested parties are invited to contact the Minerals Debtors' transaction consultant, Batuta Capital Advisors LLC, if they are interested in becoming a Potential Bidder for the Assets. If one or more Qualified Bids with respect to the Assets other than the Purchase Agreement are received on or before 5:00 p.m. Eastern Time on June 12, 2017, the Bankruptcy Court has scheduled an auction for the Assets (the "Auction") for June 14, 2017 at 10:00 a.m. Eastern Time. If no Qualified Bids with respect to the Assets other than the Purchase Agreement are received on or before the Bid Deadline, the Minerals Debtors will not conduct the Auction with respect to the Assets.

5. The Bankruptcy Court has scheduled a hearing to approve the Purchase Agreement and the Sale of the Assets to the Proposed Purchaser (or another Successful Bidder) on June 23, 2017 at 2:00 p.m. Eastern Time, before the Honorable Christopher S. Sontchi, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 5th Floor, Courtroom No. 6, Wilmington, Delaware 19801, or as soon thereafter as counsel may be heard.

6. Objections to the Sale Motion or any of the relief sought therein must (a) be in writing, (b) state the basis of such objection with specificity, (c) conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of the United States Bankruptcy Court for the District of Delaware and (d) be filed with the Bankruptcy Court and served in accordance with the rules of the Bankruptcy Court upon (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; (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.); and (5) Counsel to the Stalking Horse Bidder, Oscar N. Pinkas, Dentons US LLP, 1221 Avenue of the Americas, New York, NY 10020, Email: oscar.pinkas@dentons.com, and Justin R. Alberto, Bayard, P.A., 222 Delaware Avenue, Suite 900, Wilmington, DE 19899, Email: jalberto@bayardlaw.com (the “**Notice Parties**”) so as to be actually received by **no later than June 9, 2017 at 4:00 p.m. Eastern Time with respect to the Stalking Horse Bidder**. If the Successful Bidder is a bidder other than the Stalking Horse Bidder, supplemental objections, if any, shall be filed and served on the Notice Parties **by no later than June 19, 2017 at 4:00 p.m. Eastern Time**.

7. The Auction and/or Sale Hearing may be adjourned, from time to time, without further notice to creditors or parties in interest other than by announcement of the adjournment in open court or on the Bankruptcy Court’s calendar.

Dated: May ____, 2017
Wilmington, Delaware

Respectfully submitted,

Tobey M. Daluz (DE No. 3939)
Matthew G. Summers (DE No. 5533)
Leslie C. Heilman (DE No. 4716)
Laurel D. Roglen (DE No. 5759)
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and

Vincent J. Marriott, III*
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E-mail: marriott@ballardspahr.com
(*Admitted *Pro Hac Vice*)

Counsel to the Chapter 11 Trustee

EXHIBIT 3 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.*,¹ :
 : **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.²

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”).

¹ 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).

² The Plan Debtors are Molycorp, Inc.; Magnequench, Inc.; Magnequench International, Inc.; Magnequench Limited; MCP Callco 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 May [___], 2017, the Bankruptcy Court entered an Order (A) Approving Bidding Procedures for the Sale of the Minerals Debtors' Assets, (B) Approving an Expense Reimbursement 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**").³ 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 **June 23, 2017 at 2:00 p.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 4:00 p.m. (Eastern Time) on May [___], 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; (4) Counsel to the Stalking Horse Bidder, Oscar N. Pinkas, Dentons US LLP, 1221 Avenue of the Americas, New York, NY 10020, Email: oscar.pinkas@dentons.com, and Justin R. Alberto, Bayard, P.A., 222 Delaware Avenue, Suite 900, Wilmington, DE 19899, Email: jalberto@bayardlaw.com; and (5) the Office of the United

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

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.

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 [____], 2017 at 4:00 p.m. (Eastern Time) with respect to the Stalking Horse Bidder, and at the Sale Hearing if the Successful Bidder is a bidder other than the Stalking Horse Bidder. (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: May ____, 2017
Wilmington, Delaware

Respectfully submitted,

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Matthew G. Summers (DE No. 5533)
Leslie C. Heilman (DE No. 4716)
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and

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E-mail: marriott@ballardspahr.com
(*Admitted *Pro Hac Vice*)

Counsel to the Chapter 11 Trustee

Annex 1

Cure Schedule

EXHIBIT B

PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT

by and among

Paul E. Harner, as Chapter 11 Trustee for Molycorp Minerals, LLC and certain related entities

and

ERP Strategic Minerals, LLC

Dated as of April 24, 2017

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ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this “Agreement”), dated as of April 24, 2017 (the “Effective Date”), is by and among ERP Strategic Minerals, LLC (the “Purchaser”), and Paul E. Harner, as Chapter 11 Trustee (the “Trustee”) for itself, and on behalf of, Molycorp Minerals, LLC, a Delaware limited liability company (the “Company”), and the other debtors listed on Schedule A hereto (collectively, together with the Company, the “Debtors”).

RECITALS:

A. The Debtors are debtors under title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (the “Bankruptcy Code”), and filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code on June 25, 2015, in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), where the Debtors’ bankruptcy cases are jointly administered under Case No. 15-11371 (CSS) (collectively, the “Bankruptcy Case”);

B. The Debtors were engaged in the business of owning and operating a rare earth minerals mine and related processing facility located in San Bernardino County, California (the “Facility”), and remain engaged in such business though the mine and processing facility are currently in care and maintenance (any past or present business or operations of the Debtors, the “Business”);

C. On May 2, 2016, the Trustee was appointed by the Bankruptcy Court as Chapter 11 trustee for the Debtors and their bankruptcy estates;

D. The Trustee, on behalf of the Debtors and their estates, desires to sell to Purchaser the Purchased Assets (defined below) and transfer to Purchaser the Assumed Liabilities (defined below), and Purchaser desires to purchase from the Trustee, acting on behalf of the Debtors and the Debtors’ estates, the Purchased Assets and assume the Assumed Liabilities, in each case upon the terms and conditions hereinafter set forth and subject to and in accordance with the approval of the Bankruptcy Court under the Sale Order (defined below);

E. Following the mutual execution and delivery of this Agreement, the Trustee will file the Sale Motion (defined below) seeking entry of the Sale Order approving the sale of the Purchased Assets to Purchaser under section 363(f) of the Bankruptcy Code, free and clear of any and all liens, claims, encumbrances and interests of any kind and nature whatsoever, except for Permitted Exceptions and Assumed Liabilities, and the transfer of the Assumed Liabilities to Purchaser, and, as part of the Sale Motion, the Trustee will request from the Bankruptcy Court the Bidding Procedures Order (defined below), that will provide Purchaser with certain stalking horse protections as set forth below and an agreed competitive bidding process open to all qualified bidders using this Agreement as a baseline;

F. Purchaser has available to it the financial, technical and operational expertise required to maintain and restart the Purchased Assets and the Business; and

G. The Parties desire to consummate the proposed transaction as promptly as practicable after the Bankruptcy Court enters the Sale Order.

NOW, THEREFORE, in consideration of the premises and the mutual promises herein made and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

I. DEFINITIONS

1.1 Certain Definitions. For purposes of this Agreement, each of the following terms, when used herein with initial capital letters, has the meaning specified in this Section 1.1 or in the other Sections of this Agreement identified in Section 1.2:

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

“Assignment and Assumption Agreement” means an assignment and assumption agreement substantially in the form attached to this Agreement as Exhibit A.

“Bidding Procedures Order” means an order of the Bankruptcy Court, in form and substance acceptable to Purchaser, approving, among other things, the Expense Reimbursement, stalking horse protections to Purchaser, and the bidding procedures for conducting a sale and auction of the Purchased Assets and the assumption of the Assumed Liabilities.

“Bill of Sale” means a bill of sale substantially in the form attached to this Agreement as Exhibit B.

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

“Code” means the Internal Revenue Code of 1986.

“Competing Transaction” means any of the following transactions, other than the Transaction, with one or more Persons, other than Purchaser: (i) a plan of reorganization or other financial and/or corporate restructuring of the Debtors or a material portion of their assets that substantially prohibits or impairs the Transaction; (ii) the sale or disposition of all or a material portion of the Purchased Assets to one or more Persons other than Purchaser; (iii) Purchaser is not the successful bidder in any auction conducted to sell all or a material portion of the Purchased Assets pursuant to the Bankruptcy Case and the Bankruptcy Court approves another bidder; or (iv) merger, consolidation, business combination, or recapitalization of the Debtors that substantially prohibits or impairs the Transaction.

“Contract” means any contract, agreement, commitment, promise or undertaking (including any indenture, note, bond or other evidence of indebtedness, instrument, license, lease, purchase order or other legally binding agreement), whether written or oral.

“Cure Costs” means amounts that must be paid and obligations that otherwise must be

satisfied under sections 365(b)(1)(A) and (B) of the Bankruptcy Code in connection with the assumption and assignment of any Purchased Contract, as determined by the Bankruptcy Court.

“Environmental Law” means any Law in effect at the relevant date or for the relevant period relating to the protection of human health and safety or the environment or natural resources (including air, surface water, groundwater, drainage basins, catchment basins, drinking water and drinking water supply, wetlands, streams, ponds, sediment, soil, land surfaces or subsurface strata, and plant and animal life), and including, but not limited to, any Law relating to Releases of or exposure to Hazardous Materials or the handling, generation, treatment, transportation, storage, use, arrangement for disposal or disposal, manufacture, distribution, formulation, packaging or labeling of Hazardous Materials.

“Environmental Liabilities” means any Liability arising under or related to any Environmental Law including, without limitation, Remedial Actions and Releases of Hazardous Materials.

“Excluded Matter” means any effect of: (i) any change in the United States or foreign economies or financial markets in general; (ii) any change that generally affects the industrial sectors in which the Debtors generally competed; (iii) any change arising in connection with earthquakes, hostilities, acts of war, sabotage or terrorism or military actions or any escalation or material worsening of any such hostilities, acts of war, sabotage or terrorism or military actions; (iv) any change in applicable Laws or accounting rules; (v) any actions taken or proposed to be taken by Purchaser or any of its Affiliates; (vi) the public announcement of this Agreement; or (vii) the filing of the Bankruptcy Case and a Debtor’s inability to pay certain obligations as a result of the filing of the Bankruptcy Case.

“Excluded Pre-Closing Fines” means any monetary fines and penalties to the extent assessed by any Governmental Body as a result of acts or omissions of a Debtor or its Business occurring on or before the Closing Date, including any monetary fines and penalties for which any of the Debtors has received a written notice of violation or notice of claim (or other notice of similar legal intent or meaning) from any Governmental Body relating to a violation on or prior to the Closing Date.

“Governmental Body” means any government or governmental or regulatory body thereof, or political subdivision thereof, or any agency, authority, department, commission, board, bureau, official or instrumentality of such body, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), whether foreign, federal, state, or local, or any agency, instrumentality or authority thereof, or any court or arbitrator thereof (public or private) of competent jurisdiction.

“Hazardous Material” means any substance, material or waste, to the extent the presence and amount of which is limited or regulated by any Governmental Body under any applicable Environmental Laws, including petroleum and its by-products, asbestos, and any material or substance, and including, but not limited to any material or substance which is defined as a “hazardous waste,” “hazardous substance,” “hazardous material,” “restricted hazardous waste,” “industrial waste,” “solid waste,” “contaminant,” “pollutant,” “toxic waste” or “toxic substance”

or “special waste” under the Bevill Amendment to the federal Resource Conservation and Recovery Act, or otherwise regulated under any provision of Environmental Law.

“Intellectual Property Right” means any trademark; service mark; trade name; trade dress; logo; design; symbol; corporate name; domain name or universal resource locator (URL); Internet address; mask work; topography right; invention (whether or not patentable); discovery; patent, patent application, continuation, continuation-in-part, substitution, renewal, extension, re-examination, re-filing, division and re-issuance; copyright (whether registered or common Law), copyrightable work or work of authorship, including any registration, right to apply for registration or application for registration; computer software; utility model; industrial design; right in a design; formula; recipe, technical information; process information; process; procedure; ingredient; manufacturing or processing tolerance; software license; algorithm; model or methodology; process control; database, compilation, interface, or report format; firmware; development tool; template, menu, button or icon; trade secret; know-how (whether or not memorialized); legally protectable technical information; engineering drawings; specifications; confidential information; or grant of any of the foregoing or any other intellectual property right of any nature anywhere in the world.

“IRS” means the Internal Revenue Service.

“Knowledge of Trustee” means the knowledge of the Trustee obtained in accordance with his responsibilities under the Bankruptcy Code.

“Law” means any federal, state, local or foreign law, statute, directive, code, ordinance, rule or regulation, binding interpretations or common law requirement.

“Legal Proceeding” means any judicial, administrative or arbitral actions, suits, proceedings (public or private) or claims or any proceedings by or before a Governmental Body.

“Liability” means any debt, loss, liability, claim (as defined in the Bankruptcy Code), commitment, undertaking, damage, expense, fine, penalty, cost, royalty, deficiency or obligation (including those arising out of any action, such as any settlement or compromise thereof or judgment or award therein), of any nature, whether known or unknown, disclosed or undisclosed, express or implied, primary or secondary, direct or indirect, matured or unmatured, fixed, absolute, contingent, accrued or unaccrued, liquidated or unliquidated, and whether due or to become due, and whether in contract, tort, equity or otherwise.

“Licenses” means all of the licenses, franchises, certificates, consents, authorizations, approvals, orders, and concessions held by the Debtors and applicable to the Business or the Purchased Assets, together with all pending applications for additional licenses, renewals of existing licenses, or amendments to existing licenses, which have been submitted to any Governmental Body or other entity by any Debtor applicable to the Business or the Purchased Assets.

“Lien” means any lien, encumbrance, pledge, mortgage, deed of trust, security interest, claim, lease, charge, option, easement, right-of-way, right of first refusal, restriction or encumbrance or any other similar encumbrance, whether imposed by Law, Contract or otherwise.

“Mineral Properties” means patented, unpatented and/or fee owned mining rights owned or held by any one or more of the Debtors.

“Mining Law” means any Law related to or governing the mining, extraction, beneficiation, handling and disposition of minerals, including the California Surface Mining and Reclamation Act of 1975 (California Public Resources Code § 2710 et seq.), the federal General Mining Law of 1872 (United States Code, Title 30, §§ 21 to 54, and 611 to 615, as amended) and the Federal Land Policy and Management Act of 1976 (United States Code, Title 43, §§ 1701 to 1787).

“Mining Liabilities” mean any Liability arising under or related to the Mining Law including any Reclamation or restoration obligation.

“Order” means any order, injunction, judgment, decree, ruling, writ, assessment or arbitration award of a Governmental Body.

“Ordinary Course of Business” means the ordinary and usual course of normal day-to-day operations of the Business, as conducted after the filing of the Bankruptcy Case.

“Party” or “Parties” means the Purchaser and the Trustee.

“Permits” means any and all authorizations, consents, Licenses, permits, registrations, variances, certificates of occupancy, or other approvals, certifications, waivers or clearances granted or issued by a Governmental Body, or required under Law or Environmental Law, including all applications for the foregoing, which are necessary for the operation of the Purchased Assets or desired by Purchaser.

“Permitted Exceptions” means (i) all recorded land use restrictions, easements and rights of way, (ii) statutory Liens for Taxes not yet delinquent or the amount of which is being contested in good faith by appropriate proceedings (for the avoidance of doubt, any Permitted Exception in this Subsection (ii) shall be released at or prior to Closing pursuant to the Sale Order and Section 363(f)(2) of the Bankruptcy Code unless the holder of a such valid statutory Lien for Taxes in an amount more that the cash Purchase Price objects to the Transaction), (iii) mechanics’, carriers’, workers’, repairers’, and similar Liens arising or incurred in the Ordinary Course of Business (for the avoidance of doubt, any Permitted Exception in this Subsection (iii) shall be released at or prior to Closing pursuant to the Sale Order, and so shall not constitute a Permitted Exception post-Closing), (iv) zoning, entitlement and other land use and environmental regulations or restrictions by any Governmental Body, (v) title of a lessor to equipment under a capital or operating lease if such lease is a Purchased Contract, (vi) subject to Section 2.1, pledges on deposits made in the Ordinary Course of Business (for the avoidance of doubt, any Permitted Exception in this Subsection (vi) concerning a Purchased Asset shall be released at or prior to Closing pursuant to the Sale Order, and so shall not constitute a Permitted Exception post-Closing), (vii) subject to the terms of the Sale Order, any other imperfections in title, easements, land use restrictions, and licenses that do not materially and adversely affect title, value, use or transferability of the affected asset or property, (viii) Liens for Taxes that constitute Assumed Liabilities, (ix) the paramount rights of any Governmental Body with respect to the Mineral Properties, if any, including any of its reversionary rights (and Purchaser reserves

all rights, claims and defenses thereto), and (x) Liens that will be released by the Sale Order (and so shall not constitute a Permitted Exception post-Closing).

“Person” means any individual, corporation, limited liability company, partnership, firm, joint venture, association, joint-stock company, trust, unincorporated organization, Governmental Body or other entity.

“Purchaser Material Adverse Effect” means any event, change, effect, condition, state of facts or occurrence (regardless of whether such event, change, effect, condition, state of facts or occurrence constitutes a breach of any representation, warranty or covenant of Purchaser hereunder) which has had or would reasonably be expected to have, individually or when considered together with any other event, change, effect, condition, state of facts or occurrence, a material and adverse effect on the ability of Purchaser to consummate the Transaction or perform its obligations under this Agreement.

“Quitclaim Deed” means a quitclaim deed to convey title to the Mineral Properties in recordable form and in accordance with all applicable statutory requirements, substantially in the form attached to this Agreement as Exhibit C.

“Reclamation” means, consistent with Cal. Pub. Resources Code § 2733, the combined process of land treatment that minimizes water degradation, air pollution, damage to aquatic or wildlife habitat, flooding, erosion, and other adverse effects from surface mining operations, including adverse surface effects incidental to underground mines, so that mined lands are reclaimed to a useable condition which is readily adaptable for alternate land uses and creates no danger to public health or safety. The process may extend to affected lands surrounding mined lands, and may require backfilling, grading, resoiling, revegetation, soil compaction, stabilization, or other measures.

“Release” means any release, spill, emission, leaking, pumping, injection, pouring, emptying, escape, deposit, disposal, discharge, dispersal or leaching into the environment, or into, out of, or under any property of Hazardous Materials, whether intentional or unintentional that is reportable under any applicable Environmental Law.

“Remedial Action” means all actions to (i) clean up, remediate, remove or treat the Release of Hazardous Material, (ii) perform post-remedial monitoring and care, or (iii) to correct a condition of noncompliance with Environmental Laws, as required in writing by any Governmental Body.

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

“Retained Records” means (i) any minute books, stock ledgers, corporate seals and stock certificates of the Debtors or any of their Affiliates, and a copy of other similar books and records that the Debtors or the Trustee are required by Law to retain or that the Debtors or the Trustee determine in good faith are necessary or advisable to retain, including Tax Returns and financial statements, and (ii) a copy of any other books, records, and other materials that are required by Law to be retained or maintained by the Debtors or the Trustee.

“Sale Motion” means a motion filed with the Bankruptcy Court seeking entry of the Sale Order, in form and substance acceptable to Purchaser and Trustee.

“Sale Order” means the order of the Bankruptcy Court approving this Agreement and the Transaction contemplated hereby in form and substance satisfactory to Purchaser and the Trustee, the current form of which is attached as Exhibit D.

“Tax Authority” means any government, or agency, instrumentality or employee thereof, charged with the administration of any Law or regulation relating to Taxes.

“Taxes” means (i) all federal, state, local or foreign taxes, charges or other assessments, including all net income, gross receipts, capital, sales, use, ad valorem, value added, transfer, franchise, profits, inventory, capital stock, license, withholding, payroll, employment, social security, unemployment, excise, severance, stamp, occupation, property and estimated taxes, (ii) any item described in clause (i) for which a taxpayer is liable as a transferee or successor, by reason of the regulations under Section 1502 of the Code, or by contract, indemnity or otherwise, and (iii) all interest, penalties, fines, additions to tax or additional amounts imposed by any Tax Authority in connection with any item described in clause (i) or (ii).

“Tax Return” means all returns, declarations, reports, estimates, information returns and statements required to be filed in respect of any Taxes (including any attachments thereto or amendments thereof).

“Transaction Documents” means the Assignment and Assumption Agreement, the Bill of Sale, the Quitclaim Deed, the Warranty Deed, and each other agreement, document or instrument contemplated by this Agreement or necessary to the consummation of the Transaction.

“Transaction” means the transactions contemplated by this Agreement.

“Trustee Material Adverse Effect” means any event, change, effect, condition, state of facts or occurrence (regardless of whether such event, change, effect, condition, state of facts or occurrence constitutes a breach of any representation, warranty or covenant of the Trustee hereunder) which has had or would reasonably be expected to have, when considered in the aggregate together with any other events, changes, effects, conditions, states of facts or occurrences, (i) a material, long-term adverse effect on or a material, long-term adverse change in or to the Purchased Assets, considered as a whole, or (ii) a material and adverse effect on the ability of the Trustee to consummate the Transaction, in each case other than an event, change, effect, condition or occurrence resulting from an Excluded Matter.

“Warranty Deed” means a special warranty deed to the Owned Real Property in recordable form and in accordance with all applicable statutory requirements, substantially in the form attached to this Agreement as Exhibit E.

1.2 Terms Defined Elsewhere in this Agreement. For purposes of this Agreement, the following terms have the meanings set forth in the sections indicated:

<u>Term</u>	<u>Section</u>
Agreement	Preamble
Allocation Notice of Objection	10.2(a)
Assumed Cure Costs	2.5
Assumed Liabilities	2.3
Bankruptcy Case	Recitals
Bankruptcy Code	Recitals
Bankruptcy Court	Recitals
Business	Recitals
Cash Amount	3.1(a)
Casualty Event	8.6
Casualty Notice	8.6
Closing	4.1
Closing Cash Payment	3.3
Closing Date	4.1
Company	Preamble
Confidentiality Agreement	8.5
Debtors	Preamble
Deposit Amount	3.2
Effective Date	Preamble
Excluded Assets	2.2
Excluded Liabilities	2.4
Expense Reimbursement	7.2
Facility	Recitals
Final Allocation Statement	10.2(a)
Necessary Consent	2.7(a)
Owned Real Property	2.1(b)(i)
Periodic Non-Income Taxes	10.3(a)
Post-Closing Straddle Period	10.3(b)
Pre-Closing Straddle Period	10.3(b)
Proposed Allocation Statement	10.2(a)
Purchased Assets	2.1(b)
Purchased Contracts	2.1(b)(xvi)
Purchased Intellectual Property	2.1(b)(xii)
Purchase Price	3.1
Purchaser	Preamble
Straddle Period	10.3(b)
Tangible Personal Property	2.1(b)(iv)
Termination Date	4.4(a)
Transfer Taxes	10.1
Trustee	Preamble

1.3 Other Definitional and Interpretive Matters. Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation will apply:

Calculation of Time Period. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date

that is the reference date in calculating such period will be excluded. If the last day for the giving of any notice or the performance of any act required or permitted under this Agreement is a day that is not a Business Day, then the time for the giving of such notice or the performance of such action will be extended to the next succeeding Business Day.

Conjunctive. The word “or” is used in the inclusive sense of “and/or.”

Contracts. Reference to any Contract means such Contract as amended or modified and in effect from time to time in accordance with its terms and includes all exhibits, schedules and other attachments thereto.

Dollars. Any reference in this Agreement to \$ will mean U.S. dollars.

Exhibits/Schedules. The Parties continue to negotiate the forms of Exhibits and Schedules, which shall be in form and substance acceptable to Purchaser and Trustee. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein will be defined as set forth in this Agreement.

Gender and Number. Any reference in this Agreement to gender will include all genders, and words imparting the singular number only will include the plural and vice versa.

Headings. The division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and will not affect or be utilized in construing or interpreting this Agreement. All references in this Agreement to any Article, Section, Recital, Exhibit or Schedule are to the corresponding Article, Section, Recital, Exhibit or Schedule of or to this Agreement unless otherwise specified.

Herein. The words such as “herein,” “hereinafter,” “hereof” and “hereunder” refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires.

Including. The word “including” or any variation thereof means “including, without limitation” and will not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

Law. Reference to any Law means such Law as amended, modified, codified, replaced or re-enacted, in whole or in part, and in effect from time to time, including any successor legislation thereto and any rules and regulations promulgated thereunder, and references to any section or other provision of a Law means that section or provision of such Law in effect from time to time and constituting the substantive amendment, modification, codification, replacement or re-enactment of such section or other provision.

The Parties have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement will be construed as jointly drafted by the Parties and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

This Agreement and each Transaction Document has been drafted, negotiated and executed in the English language. If this Agreement or any Transaction Document is translated into another language, the English text will govern and control for all purposes.

II. PURCHASE AND SALE OF ASSETS; ASSUMPTION OF LIABILITIES

2.1 Purchase and Sale of Assets.

(a) On the terms and subject to the conditions set forth in this Agreement, at the Closing, Purchaser will purchase, acquire and accept from the Trustee on behalf of the applicable Debtor, and the Trustee will sell, transfer, convey, assign and deliver to Purchaser, all of the Debtors' right, title and interest in, to and under the Purchased Assets, free and clear of all Liens (other than those Liens created by Purchaser and Permitted Exceptions) and Excluded Liabilities.

(b) The term "Purchased Assets" means all of the properties, assets and rights of any Debtor (other than the Excluded Assets) related to the Business and existing as of the Closing, wherever located, including:

(i) all real property owned by the Debtors (the "Owned Real Property"), including facilities, improvements, fixtures and other appurtenances thereto and rights in respect thereof owned by a Debtor, including as described in Schedule 2.1(b)(i);

(ii) all Mineral Properties, including facilities, improvements, fixtures and other appurtenances thereto and rights in respect thereof owned by a Debtor or to which a Debtor has rights, including as described in Schedule 2.1(b)(ii);

(iii) the buildings, facilities, infrastructure, fixtures and improvements located on the Owned Real Property or Mineral Properties;

(iv) all personal property, plants and equipment, machinery, heavy mobile equipment, forklifts and other warehouse equipment, vehicles, laboratory and testing equipment, samples, fixtures, furniture, furnishings, office equipment, computers and related computer hardware, information technology equipment and cabling, telecommunications equipment and cabling, leasehold improvements and other tangible personal property owned by a Debtor, wherever located, and whether or not located on or at the Owned Real Property or the Mineral Properties, including those set forth on Schedule 2.1(b)(iv) (collectively, the "Tangible Personal Property");

(v) all water rights, together with all wells and related equipment;

(vi) all drill core and core samples;

(vii) all supplies, spare parts and consumables;

(viii) all Permits, including Permits described in Schedule 2.1(b)(viii), to the extent transferable;

(ix) all cash and cash collateral posted in respect of letters of credit, bonds, or Permits, including under bonds posted by Westchester Fire Insurance Company, Ironshore, Lexon and Bond Safeguard and as set forth on Schedule 2.1(b)(ix);

(x) all deposits (including security deposits for rent, electricity, telephone, other utilities or otherwise) and all prepaid or deferred payables, charges and expenses (including for *ad valorem* taxes, leases and rentals), including those listed on Schedule 2.1(b)(x), except for those deposits excluded under Section 2.2(h);

(xi) all inventory, Cerium 5320 Bag House Dust, stock piles, tailings, raw materials, semi-finished goods, concentrates, work-in-process and finished goods that, as of the close of business on the Closing Date, are used or held for use in the Business and wherever located, whether or not located at the Owned Real Property or Mineral Properties, except as specifically excluded under Section 2.2(n);

(xii) all Intellectual Property Rights and any rights, causes of action and remedies for past, present and future infringements of any of the Intellectual Property Rights (the "Purchased Intellectual Property");

(xiii) all specifications, drawings, plans, blueprints, diagrams, flow charts, engineering drawings and plans, design specifications, manufacturing data and information, processing and production manuals and procedures, operating instructions, user documentation, operating records, training materials, safety manuals, maintenance manuals and records, work papers, files, documents, papers, reports, photographs, letters, budgets, forecasts, title policies, customer lists, personnel files, data, reports, marketing, advertising and promotional materials, cost and pricing information, business plans, manuals, archives, research and development files, regulatory filings and data, information and data related to Permits, drill logs, assays, metallurgical test work, mine plans and similar information, agreements, and other documents, communications, books or records, whether in hard copy or computer or other format, related to the Business or the Purchased Assets, but excluding Retained Records (subject to the rights of Purchaser pursuant to Section 2.2(f));

(xiv) all warranties, guarantees and similar rights, including warranties and guarantees made by suppliers, manufacturers and contractors, and claims against suppliers and other third parties, unless specifically set forth as an Excluded Asset;

(xv) all rights to telephone numbers, facsimile numbers and email addresses;

(xvi) the Contracts to which any Debtor is a party that (A) are set forth on Schedule 2.1(b)(xvi), and (B) are unexpired as of the Closing Date (including those Contracts that have been previously unexpired) (the "Purchased Contracts"); and

(xvii) all goodwill associated with the business of any Debtor and/or the Purchased Assets.

The Trustee and Purchaser shall coordinate the delivery of possession of all Purchased Assets to Purchaser at Closing. Tangible Purchased Assets, other than those located in Denver, Colorado,

shall be delivered by the Trustee to Purchaser at Closing by securing such assets on the Owned Real Property or Mineral Properties.

2.2 Excluded Assets. Nothing herein contained will be deemed to constitute an agreement to sell, transfer, assign or convey the Excluded Assets to Purchaser, and the Trustee will retain all right, title and interest to, in and under the Excluded Assets. The term “Excluded Assets” means the following assets, properties and rights of any Debtor, other than the Purchased Assets:

- (a) subject to Section 2.1(b), all cash and cash equivalents;
- (b) all accounts receivable;
- (c) all rights, claims, causes of action and credits to the extent relating solely to any Excluded Asset or Excluded Liability, including any such item to the extent arising under any guarantee, warranty, indemnity or similar right in favor of a Debtor in respect of an Excluded Asset or Excluded Liability;
- (d) any shares of capital stock or other equity interest of any of the Debtors or any of their subsidiaries or any securities convertible into, exchangeable or exercisable for shares of capital stock or other equity interest of any of the Debtors or any of their subsidiaries;
- (e) any shares of capital stock or other equity interests of any third party held by any of the Debtors or any of their subsidiaries, including any securities convertible into, exchangeable or exercisable for shares of capital stock or other equity interests of any such third party;
- (f) all Retained Records, except that Purchaser will have the right to make copies of any portions of such Retained Records that relate to the Purchased Assets;
- (g) all claims and causes of action against any insurance carrier, contractor, or other third-party covering the failure in October 2014 of certain of the Debtors’ leach tanks;
- (h) all post-petition adequate assurance deposits provided to utilities and any deposits provided to suppliers or service providers to the Debtors on a pre-petition or post-petition basis, unless provided pursuant to a Purchased Contract in which case such deposit shall be a Purchased Asset;
- (i) subject to Section 2.7, any Purchased Contract that requires the consent of a third party to be assumed and assigned hereunder as to which, by the Closing Date, such consent has not been obtained;
- (j) subject to Section 8.6, all of the Debtors’ or the Trustee’s insurance policies and rights thereunder, including all insurance proceeds or rights to insurance proceeds, in each case received or receivable by any Debtor or the Trustee;
- (k) all avoidance actions or similar causes of action arising under sections 544 through 553 of the Bankruptcy Code, including any proceeds thereof;

(l) all refunds, credits and rebates of Taxes for any period or portion thereof prior to or ending on the Closing Date;

(m) all rights in or to assets leased by the Debtors except to the extent such lease is assigned to Purchaser as a Purchased Contract; and

(n) notwithstanding anything to the contrary in this Agreement, any assets or properties of the Debtors or any of their subsidiaries outside of the United States.

2.3 Assumption of Liabilities. On the terms and subject to the conditions set forth in this Agreement, at the Closing, Purchaser will assume, effective as of the Closing, and will timely perform and discharge in accordance with their respective terms, the following Liabilities (collectively, the “Assumed Liabilities”):

(a) all Liabilities first arising and accruing on or after the Closing (and for the avoidance of doubt, other than any Liability arising out of or related to any breach, default (whether monetary or non-monetary), act or omission that occurred on or prior to the Closing) from the ownership or operation of the Purchased Assets by Purchaser;

(b) all Liabilities of the Debtors under the Purchased Contracts, including, without limitation, any Assumed Cure Costs, whether arising or accruing before, on or after the Closing;

(c) all Environmental Liabilities of the Debtors in respect of operations at the Facility, except for Excluded Pre-Closing Fines, whether arising or accruing before, on or after the Closing;

(d) all Mining Liabilities of the Debtors in respect of operations at the Facility, except for Excluded Pre-Closing Fines, whether or not arising or accruing before, on or after Closing;

(e) any Transfer Taxes; and

(f) all Liabilities to the extent specifically listed on Schedule 2.3(f).

2.4 Excluded Liabilities. Notwithstanding anything to the contrary set forth herein, Purchaser will not assume and will be deemed not to have assumed any of the Excluded Liabilities. “Excluded Liabilities” means any and all Liabilities of the Debtors arising out of, relating to or otherwise in respect of the Purchased Assets other than the Assumed Liabilities.

2.5 Cure Amounts. At the Closing and pursuant to section 365 of the Bankruptcy Code, the Trustee will assume the Purchased Contracts (to the extent not previously assumed) and, subject to the terms herein, assign the Purchased Contracts to Purchaser, and Purchaser, subject to the terms herein, will assume the Purchased Contracts. All Cure Costs with respect to the Purchased Contracts (the “Assumed Cure Costs”) will be paid by Purchaser, as and when finally determined by the Bankruptcy Court pursuant to the procedures set forth in the Sale Order or other Order of the Bankruptcy Court, and not by the Trustee, and the Trustee will have no liability for any Assumed Cure Costs.

2.6 Surety Bonds. Purchaser shall arrange for the replacement or renewal of any surety bonds listed on Schedule 2.6 and related surety bond obligations of the Debtors, and shall be responsible for obtaining any additional surety bonds as may be required under applicable Law.

2.7 Non-Assignment of Assets.

(a) Notwithstanding any other provision of this Agreement to the contrary, this Agreement will not constitute an agreement to assign or transfer and will not effect the assignment or transfer of any Purchased Asset if (i) an attempted assignment or transfer thereof, without the approval, authorization or consent of, or granting or issuance of any License or Permit by, any third party thereto despite the provisions of the Bankruptcy Code (each such action, a “Necessary Consent”), would constitute a breach, default or violation thereof or of any Law or Order or in any way adversely affect the rights of Purchaser thereunder, or (ii) the Bankruptcy Court has not entered an Order approving such assignment or transfer. In such event, such assignment or transfer is subject to such Necessary Consent being obtained and the Trustee and Purchaser will use their commercially reasonable efforts to obtain the Necessary Consents with respect to any such Purchased Asset or any claim or right or any benefit arising thereunder for the assignment or transfer thereof to Purchaser as Purchaser may reasonably request; provided that neither the Debtors nor the Trustee will be obligated to pay any consideration therefor to any third party from whom consent or approval is requested or to initiate any litigation or Legal Proceedings to obtain any such consent or approval. If such Necessary Consent is not obtained, or if an attempted assignment or transfer thereof would be ineffective or would adversely affect the rights of Purchaser to such Purchased Asset following the Closing, the Trustee and Purchaser will cooperate in a mutually agreeable arrangement, to the extent feasible and at no expense to the Debtors or the Trustee, under which Purchaser would obtain the benefits and assume the obligations thereunder in accordance with this Agreement. The Debtors and Purchaser shall enter into an agreement as necessary that provides the Purchaser the full benefit of any Permits prior to their transfer into Purchaser’s name.

(b) Subject to Section 2.7(a), if after the Closing (i) Purchaser holds any Excluded Assets or Excluded Liabilities or (ii) any Debtor or the Trustee holds any Purchased Assets or Assumed Liabilities, Purchaser or the Trustee, as applicable, will promptly transfer (or cause to be transferred) such assets or such Liabilities to or from (as the case may be) the other Party. Prior to any such transfer, the Party receiving or possessing any such asset will hold it in trust for the other Party.

(c) At any time prior to the Closing, Purchaser will be entitled, in its sole discretion, to add or remove any Contract from Schedule 2.1(b)(xvi) by providing written notice thereof to the Trustee. Any Contract so added will be deemed to be a “Purchased Contract,” subject to receipt of a Bankruptcy Court order in form and substance acceptable to Purchaser assigning such Purchased Contract to the Purchaser. Any Contract so removed will be deemed to be an “Excluded Asset” and not a Purchased Contract for all purposes hereunder. The Trustee will not reject or seek to reject any Contract without the consent of Purchaser.

2.8 Further Conveyances and Assumptions. From time to time following the Closing, the Trustee and Purchaser will execute, acknowledge and deliver all such further conveyances,

notices, assumptions, assignments, releases and other instruments, and will take such further actions, as may be reasonably necessary or appropriate to assure fully to Purchaser and its respective successors or assigns, all of the properties, rights, titles, interests, estates, remedies, powers and privileges intended to be conveyed to Purchaser under this Agreement and to assure fully to the Trustee, the assumption of the liabilities and obligations intended to be assumed by Purchaser under this Agreement, and to otherwise make effective the Transaction, except that nothing in this Section 2.8 will require Purchaser to assume any Liabilities other than the Assumed Liabilities.

III. CONSIDERATION; ADJUSTMENT

3.1 Consideration. The aggregate consideration for the Purchased Assets (the "Purchase Price") will be:

- (a) one million two hundred thousand dollars (\$1,200,000.00) (the "Cash Amount"); and
- (b) the assumption of the Assumed Liabilities.

3.2 Purchase Price Deposit. Purchaser shall deposit into a single account designated by the Trustee within three (3) Business Days of the Effective Date, an amount equal to five hundred thousand dollars (\$500,000.00) (the "Deposit Amount"). The Trustee will be entitled to retain the Deposit Amount (together with all accrued investment income thereon and any other earnings in respect thereto) as follows:

(a) if the Closing occurs, the Deposit Amount and all accrued investment income thereon and any other earnings in respect thereto will be applied towards the Cash Amount pursuant to Section 3.3;

(b) if this Agreement is terminated (i) by the Trustee pursuant to Section 4.4(d) or (ii) pursuant to Section 4.4(a), if the Closing has not occurred by the Termination Date due to a breach, under the standards set forth in the applicable Section on termination, of any representations, warranties, covenants or agreements contained in this Agreement by Purchaser, the Deposit Amount, together with all accrued investment income thereon and any other earnings in respect thereto, will be retained by the Trustee; and

(c) if this Agreement is terminated under any circumstances not contemplated by Section 3.2(b), the Deposit Amount, together with all accrued investment income thereon and any other earnings in respect thereto, will be returned to Purchaser.

3.3 Payment of Purchase Price. At Closing, (a) Purchaser will pay to the Trustee, by wire transfer of immediately available funds to a single account designated by the Trustee not less than three (3) Business Days prior to the Closing Date, the Cash Amount less the Deposit Amount and all accrued investment income thereon (the "Closing Cash Payment"), and (b) the Deposit Amount and all accrued investment income thereon shall be retained by the Trustee as provided in Section 3.2(a). The Trustee shall provide to Purchaser the calculation for the Closing Cash Payment as of the Closing Date.

3.4 Apportionments. (a) To the extent ordinary course costs and expenses (and credits therefor to the extent paid prior to the Closing Date) of the Business that constitute Assumed Liabilities relate to a Purchased Contract or to Owned Real Property or Mineral Properties for a period that begins prior to the Closing Date and ends after the Closing Date, such expenses (and credits) are to be apportioned between the Debtors, on the one hand, and Purchaser, on the other hand, as of 11:59 p.m. eastern time on the Closing Date, including the following:

(i) periodic utility assessments, water meter charges, sewer rents, waste disposal charges, contract maintenance charges, cleaning services, and data storage charges, if any, on the basis of the year for which assessed; and

(ii) charges and fees payable for telephone services, internet services, water, heat, steam, electric power, gas and other utilities, at the price charged by the suppliers, including any Taxes thereon and based upon applicable meter readings, where available, made on or immediately prior to or immediately after the Closing Date.

(b) If, after apportioning the foregoing expenses, a Party has borne more than its allocable share of such expenses, the other Party will promptly make the appropriate compensating payment(s) to such Party.

IV. CLOSING AND TERMINATION

4.1 Closing Date. Subject to the satisfaction of the conditions set forth in Sections 9.1, 9.2 and 9.3 (or the waiver thereof by the Party entitled to waive that condition), the closing of the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities provided for in Article II (the “Closing”) will take place at Ballard Spahr LLP, 1735 Market Street, 48th Floor, Philadelphia, PA 19103 at 9:00 a.m. (Eastern time) on the date that is no later than five (5) Business Days following the satisfaction or waiver of the conditions set forth in Article IX (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions), or at such other place and time as the Parties may designate in writing. The date on which the Closing is held is referred to in this Agreement as the “Closing Date.”

4.2 Deliveries by the Trustee. At the Closing, the Trustee will deliver to Purchaser:

- (a) one or more duly executed Bills of Sale;
- (b) one or more duly executed Assignment and Assumption Agreements;
- (c) duly executed Warranty Deed conveying title to the Owned Real Property, in recordable form;
- (d) duly executed Quitclaim Deed conveying title to the Mineral Properties, in recordable form;
- (e) executed title transfers for vehicles and equipment subject to certificates of title;

(f) a certificate required to be delivered pursuant to Sections 9.1(a) and 9.1(b); and

(g) all other deeds, endorsements, assignments and other instruments of conveyance and transfer, reasonably requested by Purchaser, to convey and assign the Purchased Assets to Purchaser and vest title therein in Purchaser.

4.3 Deliveries by Purchaser. At the Closing, Purchaser will deliver to the Trustee:

(a) the Closing Cash Payment;

(b) one or more duly executed Assignment and Assumption Agreements;

(c) the officers certificate required to be delivered pursuant to Sections 9.2(a) and 9.2(b); and

(d) all such other documents, instruments and certificates, reasonably requested by the Trustee, to evidence the assumption by Purchaser of the Assumed Liabilities.

4.4 Termination of Agreement. This Agreement may be terminated prior to the Closing as follows:

(a) by Purchaser or the Trustee, if the Closing has not occurred by 5:00 p.m. Eastern time on June 30, 2017 or such later date agreed to in writing by the Parties, which agreement shall not be unreasonably delayed or withheld (the "Termination Date"), provided that, if the Closing has not occurred due to the failure of the Bankruptcy Court to enter the Sale Order and if all other conditions to the respective obligations of the Parties to close hereunder that are capable of being fulfilled by the Termination Date have been so fulfilled or waived (other than any conditions satisfied as part of the Closing), then the Termination Date shall be July 14, 2017; provided, further, that (i) if the Closing has not occurred on or before the Termination Date due to a material breach of any representations, warranties, covenants or agreements contained in this Agreement by Purchaser or the Trustee, or (ii) if a Party shall have breached its covenant of good faith and fair dealing with respect to this Agreement, as to each then the breaching Party may not terminate this Agreement pursuant to this Section 4.4(a);

(b) by mutual written consent of the Trustee and Purchaser;

(c) by Purchaser, if the Trustee breaches any representation or warranty or any covenant or agreement contained in this Agreement in any material respect, such breach would result in a failure of a condition set forth in Sections 9.1 or 9.3 and such breach has not been cured by the earlier of (i) ten (10) Business Days after the giving of written notice by Purchaser to the Trustee of such breach and (ii) the Termination Date; provided that Purchaser shall not have the right to terminate this Agreement pursuant to this Section 4.4(c) if Purchaser is then in material breach of any representation, warranty, covenant or agreement contained in this Agreement that would result in the closing conditions set forth in Section 9.2(a) or 9.2(b) not being satisfied;

(d) by the Trustee, if Purchaser breaches any representation or warranty or

any covenant or agreement contained in this Agreement in any material respect, such breach would result in a failure of a condition set forth in Sections 9.2 or 9.3 and such breach has not been cured by the earlier of (i) ten (10) Business Days after the giving of written notice by the Trustee to Purchaser of such breach and (ii) the Termination Date; provided that the Trustee shall not have the right to terminate this Agreement pursuant to this Section 4.4(d) if the Trustee is then in material breach of any representation, warranty, covenant or agreement contained in this Agreement that would result in the closing conditions set forth in Section 9.1(a) or 9.1(b) not being satisfied;

(e) by either the Trustee or Purchaser if the Bankruptcy Court approves a Competing Transaction, or automatically if a Competing Transaction is consummated;

(f) by Purchaser, if the Bidding Procedures Order is not entered by the Bankruptcy Court;

(g) by Purchaser, if the Sale Order has not been entered by the Bankruptcy Court on or before June 23, 2017;

(h) by Purchaser, if the Trustee makes any filing with the Bankruptcy Court or seeks other relief which, if granted, would substantially prohibit or impair the Trustee's ability to perform its obligations under this Agreement or the consummation of the transactions under this Agreement;

(i) by Purchaser, if the Bankruptcy Case is dismissed or converted to a proceeding under chapter 7 of the Bankruptcy Code;

(j) by Purchaser or Trustee pursuant to the terms of Section 8.6;

(k) by the Trustee or Purchaser if there is in effect a final non-appealable Order of a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the Closing of the Transaction that cannot be resolved through an amendment of this Agreement in form and substance acceptable to the Parties; it being agreed that the Parties will promptly appeal (one or more times) any adverse determination and pursue such appeal(s) with reasonable diligence unless and until this Agreement is terminated pursuant to this Section 4.4 and that the Terminate Date will be automatically extended up to 45 days in the event an appeal remains pending or is available;

(l) by the Purchaser in the event a secured creditor of the Debtors forecloses on or otherwise enforces its rights against any of the Purchased Assets;

(m) by the Trustee upon a Purchaser Material Adverse Effect; or

(n) by the Purchaser upon a Trustee Material Adverse Effect.

4.5 Procedure Upon Termination. In the event of termination pursuant to Section 4.4, the terminating Party will give written notice thereof to the other Party, and this Agreement will terminate as described in Section 4.6, and the purchase of the Purchased Assets hereunder will be abandoned, without further action by Purchaser or the Trustee.

4.6 Effect of Termination. In the event that this Agreement is terminated as provided herein, then each of the Parties will be relieved of its duties and obligations arising under this Agreement after the date of such termination, and the Parties and their respective Representatives will be fully released and discharged from any Liability after such termination, and such termination shall be without liability to any Party, except that the provisions of Section 3.2, this Section 4.6, Section 7.2, Section 8.5, and Article XI and, to the extent necessary to effectuate the foregoing enumerated provisions, Section 1.1, Section 1.2 and Section 1.3, will survive any such termination and will be enforceable.

V. REPRESENTATIONS AND WARRANTIES OF THE TRUSTEE

The Trustee hereby represents and warrants to Purchaser that:

5.1 Authorization of Agreement. Subject to entry of the Bidding Procedures Order and the Sale Order: (a) the Trustee has the requisite power and authority to execute and deliver this Agreement and the Transaction Documents to which he is a party and to perform his obligations hereunder and thereunder; (b) this Agreement and the Transaction Documents to which the Trustee is a party have been duly and validly executed and delivered, and each agreement, document or instrument contemplated hereby or thereby to be delivered at or prior to Closing will be duly and validly executed and delivered, by the Trustee; and (c) (assuming the due authorization, execution and delivery by the Purchaser) this Agreement and the Transaction Documents to which the Trustee is a party constitute legal, valid and binding obligations of the Trustee enforceable against the Trustee in accordance with its terms, subject to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at Law or in equity).

5.2 Conflicts; Consents of Third Parties.

(a) Subject to entry of the Sale Order, and except as set forth on Schedule 5.2(a), the execution and delivery by the Trustee of this Agreement and the Transaction Documents to which he is a party, the consummation of the Transaction and compliance by the Trustee with any of the provisions hereof or thereof do not and will give rise to a right of termination, cancellation or acceleration of any obligation or to loss of a material benefit under, or result in the creation of any Liens or Liabilities upon any of the Purchased Assets or cancellation under any provision of (i) any Purchased Contract, (ii) any Order, or (iii) any applicable Law, other than such conflicts, violations, defaults, terminations, cancellations or accelerations that would not, individually or in the aggregate, have or reasonably be expected to have, a Trustee Material Adverse Effect.

(b) Subject to entry of the Sale Order, except as set forth on Schedule 5.2(b), no consent, waiver, approval, Order or authorization of, or declaration or filing with, or notification to, any Person or Governmental Body is required in connection with the execution and delivery by the Trustee of this Agreement or any other agreement, document or instrument contemplated hereby or thereby to which the Trustee is a party, the compliance by the Trustee with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or thereby or the taking by the Trustee of any other action contemplated hereby or thereby (with or without notice or lapse of time, or both), except for (i) the entry of the Sale

Order, and (ii) immaterial consents, waivers, approvals, Orders, authorizations, declarations, filings and notifications.

5.3 Real Property. Schedule 5.3 sets forth the legal descriptions of the Owned Real Property and the Mineral Properties. To the Knowledge of Trustee, since May 2, 2016, (a) no Debtor has received written notice from any Governmental Body that any of the improvements comprising the Owned Real Property or the Mineral Properties of the Business conducted by Debtors on the Owned Real Property or the Mineral Properties is in violation of any use or occupancy restriction, limitation, easement, condition or covenant of record or Law, other than with respect to such violations as would not, individually or in the aggregate, have or reasonably be expected to have, a Trustee Material Adverse Effect; and (b) no Debtor has received a written foreclosure notice or other reversionary notice, including pursuant to eminent domain, from any Person in respect of the Owned Real Property or the Mineral Properties.

5.4 Title to Purchased Assets. Subject to the entry of the Sale Order, at the Closing, Purchaser will be vested with good and valid title to the Purchased Assets, free and clear of all Liens (other than Permitted Exceptions) and Excluded Liabilities, to the fullest extent permissible under Law.

5.5 Condition of Tangible Personal Property. To the Knowledge of the Trustee, since May 2, 2016, the Tangible Personal Property has been maintained in a condition of repair consistent with a plan of care and maintenance.

5.6 Purchased Contracts. To the Knowledge of Trustee, since May 2, 2016, no Debtor has received a written notice of default or a written notice of an occurrence which, with the passage of time or the giving of notice, or both, would constitute an event of default, under any Purchased Contract.

5.7 Litigation. To the Knowledge of Trustee, except for the Bankruptcy Case and as set forth in Section 2.2(g), as of the Effective Date, there are no Legal Proceedings pending or threatened in writing, against any Debtor that involve or relate to the Transaction.

5.8 Permits. Schedule 5.8 contains a list of Permits known to the Trustee as of the Effective Date. Except as set forth on Schedule 5.8, to the Knowledge of Trustee, since May 2, 2016, no Debtor has received a written notice of termination, or a written notice of the occurrence of an event which, with the passage of time or the giving of notice, or both, would reasonably result in, the termination of any Permit.

5.9 Taxes. In respect of the Business, the Purchased Assets and the Assumed Liabilities, since May 2, 2016 (a) Debtors have filed all Tax Returns that are required to be filed and have paid all Taxes which have become due pursuant to such Tax Returns or pursuant to any assessment that has become payable, except for Taxes or assessments that are being contested in good faith pursuant to applicable Legal Proceedings; and (b) to the Knowledge of the Trustee, (i) there is no Legal Proceeding pending or threatened in writing by any Taxing Authority with respect to Taxes, and (ii) no Taxing Authority has provided written notice of any Liens filed against the Purchased Assets for unpaid Taxes.

5.10 Employees. As of the Effective Date, no Debtor has employees.

5.11 Financial Advisors. The Trustee has not incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement or the Transaction for which Purchaser is or will become liable.

5.12 No Other Representations or Warranties; Schedules. Except for the representations and warranties contained in this Article V (as modified by the Schedules), none of the Trustee nor any other Person makes any other express or implied representation or warranty with respect to the Debtors, the Purchased Assets, the Assumed Liabilities or the Transaction, and the Trustee disclaims any other representations or warranties, whether made by the Trustee, any Debtor, any Affiliate of any Debtor, or any Representative of any of the foregoing. Except for the representations and warranties contained in this Article V (as modified by the Schedules), the Trustee (a) expressly disclaims and negates any representation or warranty, expressed or implied, at common Law, by statute, or otherwise, relating to the condition of the Purchased Assets (including any implied or expressed warranty of merchantability or fitness for a particular purpose, or of conformity to models or samples of materials) and (b) disclaims all liability and responsibility for any representation, warranty, projection, forecast, statement, or information made, communicated, or furnished (orally or in writing) to Purchaser or its Affiliates or Representatives pursuant to Section 8.1 or otherwise (including any opinion, information, projection, or advice that may have been or may be provided to Purchaser by any Representative of the Trustee). The Trustee makes no representations or warranties to Purchaser regarding the probable success or profitability of the Purchased Assets or the use thereof. The disclosure of any matter or item in any Schedule will not be deemed to constitute an acknowledgment that any such matter is required to be disclosed or is material or that such matter could result in a Trustee Material Adverse Effect.

VI. REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to the Trustee that:

6.1 Organization and Good Standing. Purchaser is an entity duly organized, validly existing and in good standing under the Laws of the state of its organization.

6.2 Authorization of Agreement. Purchaser has the requisite power and authority to execute and deliver this Agreement and the Transaction Documents to which it is a party and to perform its obligations hereunder and thereunder. The execution and delivery of this Agreement and the Transaction Documents to which Purchaser is a party and the consummation of the Transaction and the transactions contemplated by the Transaction Documents have been duly authorized by all requisite corporate or similar action on the part of Purchaser. This Agreement and the Transaction Documents to which Purchaser is a party have been duly and validly executed and delivered, and each agreement, document or instrument contemplated hereby or thereby to be delivered at or prior to the Closing will be duly executed and delivered by Purchaser and (assuming the due authorization, execution and delivery by the other Parties) this Agreement and the Transaction Documents to which Purchaser is a party constitutes legal, valid and binding obligations of Purchaser enforceable against it in accordance with its respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar Laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to

general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at Law or in equity).

6.3 Conflicts; Consents of Third Parties.

(a) The execution and delivery by Purchaser of this Agreement and the Transaction Documents to which Purchaser is a party, the consummation of the Transaction, and compliance by Purchaser with any of the provisions hereof or thereof do not conflict with, or result in any violation of or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation, or acceleration of any obligation or to loss of a material benefit under, any provision of (i) the certificate of incorporation and by-laws or comparable organizational documents of Purchaser, (ii) any Contract to which Purchaser is a party or by which any of the properties or assets of Purchaser are bound, (iii) any Order, or (iv) any applicable Law, other than, in the case of clauses (ii), (iii) and (iv), such conflicts, violations, defaults, terminations or cancellations that would not reasonably be expected to have, individually or in the aggregate, a Purchaser Material Adverse Effect.

(b) Subject to entry of the Sale Order, no consent, waiver, approval, Order or authorization of, or declaration or filing with, or notification to, any Person or Governmental Body is required in connection with the execution and delivery by Purchaser of this Agreement and the Transaction Documents to which Purchaser is a party, the compliance by Purchaser with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or thereby, the taking by Purchaser of any other action contemplated hereby or thereby, except for (i) the entry of the Sale Order, and (ii) immaterial consents, waivers, approvals, Orders, authorizations, declarations, filings and notifications.

6.4 Litigation. There are no Legal Proceedings pending or, to the actual knowledge of Purchaser, threatened against Purchaser, or to which Purchaser is otherwise a party before any Governmental Body, which, if adversely determined, would reasonably be expected to have, individually or in the aggregate, a Purchaser Material Adverse Effect. Purchaser is not subject to any Order except to the extent the same would not reasonably be expected to have, individually or in the aggregate, a Purchaser Material Adverse Effect.

6.5 Financial Advisors. No Person has acted, directly or indirectly, as a broker, finder or financial advisor for Purchaser in connection with the Transaction and no Person is entitled to any fee or commission or like payment in respect thereof.

6.6 Financial Capability. Purchaser has sufficient funds and other financial wherewithal available to it to: (a) pay in cash the Cash Amount and the fees and expenses required to be paid by Purchaser in connection with the Transaction and to effect the Transaction; (b) to pay any Assumed Cure Costs associated with, and to perform under, the Purchased Contracts; and (c) to obtain all surety bonds required by any Governmental Body with respect to the ownership and operation of the Purchased Assets.

6.7 Condition of the Purchased Assets. Notwithstanding anything contained in this Agreement to the contrary, Purchaser acknowledges and agrees that the Trustee is not making any representations or warranties whatsoever, express or implied, beyond those expressly given

by the Trustee in Article V (as modified by the Schedules), and Purchaser acknowledges and agrees that, except for the representations and warranties contained therein, the Purchased Assets are being transferred on a “where is” and, as to condition, “as is” basis. Purchaser acknowledges that it has conducted to its satisfaction its own independent investigation of the Purchased Assets and, in making the determination to proceed with the Transaction, Purchaser has relied on the results of its own independent investigation.

VII. BANKRUPTCY COURT MATTERS

7.1 Bankruptcy Court Filings. Promptly following the full execution of this Agreement (and in no event more than three (3) days thereafter), the Trustee shall file with the Bankruptcy Court the Sale Motion seeking entry of the Bidding Procedures Order and the Sale Order, approving the sale of the Purchased Assets to Purchaser on the terms and conditions set forth in this Agreement. The Trustee will pursue diligently the Sale Order and the Bidding Procedures Order. Any material changes to the form of the Sale Order or the Bidding Procedures Order must be approved by Purchaser and the Trustee, with such approval not to be unreasonably delayed or withheld. Purchaser agrees that it will promptly take such actions as are reasonably requested by the Trustee (and satisfactory to the Bankruptcy Court) to assist in obtaining entry of the Sale Order and the Bidding Procedures Order as it relates to the Transaction and a finding of adequate assurance of future performance by Purchaser of the Purchased Contracts, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purpose, among others, of providing necessary assurances of performance by Purchaser under this Agreement. The Trustee will give Purchaser reasonable advance notice of any hearings regarding the motions required to obtain the issuance of the Sale Order and Purchaser will have standing, the right to attend and seek to be heard at any such hearings.

7.2 Expense Reimbursement. The Trustee agrees and acknowledges that Purchaser’s negotiation and execution of this Agreement, including the negotiation of the Transaction Documents and the preparation of the Sale Motion, the Sale Order and the Bidding Procedures Order, has required a substantial investment of time and a significant commitment of resources by, on behalf of, or at the request of Purchaser and that the negotiation and execution of this Agreement, including the negotiation of the Transaction Documents and the preparation of the Sale Motion, the Sale Order and the Bidding Procedures Order, have provided value to the Trustee and to the Debtors’ estates. Therefore, upon the closing of a Competing Transaction and on the terms and expressly subject to the conditions precedent set forth in the Bidding Procedures Order, the Trustee shall reimburse, or cause to be reimbursed to, Purchaser all of the costs, fees and expenses, including the reasonable fees of attorneys, advisors and other professionals, incurred by, on behalf of, or at the request of, Purchaser in connection with its due diligence review of the Purchased Assets and Assumed Liabilities and its negotiation, entry into and consummation of this Agreement, in an amount not to exceed one hundred and fifty thousand dollars (\$150,000) (“Expense Reimbursement”), subject to Bankruptcy Court approval in accordance with this Article VII. In such event, the Expense Reimbursement shall be paid to Purchaser on the day of the closing of a Competing Transaction. Until paid, the Expense Reimbursement shall be allowed by the Bankruptcy Court as a super-priority administrative expense claim pursuant to section 503(b)(1)(A) of the Bankruptcy Code with priority over any or all other administrative expenses. The provisions of this Section 7.2 relating to the Expense

Reimbursement shall be a requirement of, approved by, and incorporated in the Bidding Procedures Order. The Trustee's obligations in this Section 7.2 shall survive the termination of this Agreement.

VIII. COVENANTS

8.1 Access to Information. From the Effective Date through the Closing Date, Purchaser and its Representatives will have access to and will be entitled to, make such investigation and examination of the Purchased Assets and the Assumed Liabilities as it reasonably requests. Any such investigation and examination will be conducted upon reasonable advance notice during normal business hours and under reasonable circumstances and will be subject to restrictions under applicable Law. The Trustee will use commercially reasonable efforts to cause the Debtors to reasonably cooperate with Purchaser and Purchaser's Representatives in connection with such investigation and examination, and Purchaser and its Representatives will reasonably cooperate with the Trustee. Notwithstanding anything herein to the contrary, no such investigation or examination will be permitted to the extent that it would require the Trustee to disclose information that would cause material competitive harm to a Debtor or would violate attorney-client privilege.

8.2 Actions Pending the Closing. Except (i) as required by applicable Law or by Order of the Bankruptcy Court, (ii) as otherwise expressly contemplated by this Agreement, or (iii) with the prior written consent of Purchaser, during the period from the Effective Date to and through the Closing Date, the Trustee will:

- (a) not dispose of or grant rights to all or any portion of the Purchased Assets;
- (b) not modify or terminate any of the Purchased Contracts or any material term thereof, including any contract that provides for contractors to provide services to the Business;
- (c) not hire, or cause any of the Debtors to hire, any employees;
- (d) not allow any Liens on the Purchased Assets (other than Permitted Exceptions), except in connection with any additional extensions of secured financing from Lexon;
- (e) maintain security at the Facility at least at the levels maintained on the Effective Date;
- (f) pay all Taxes when such become due, other than those that are being contested in good faith;
- (g) use commercially reasonable efforts to maintain the Purchased Assets in their current condition, ordinary wear and tear excepted;
- (h) maintain the Permits and the bonds, letters of credit, other instruments, or deposits issued in support of the Permits in their current status as of the Effective Date;

(i) take reasonable actions to defend and protect the Purchased Assets from infringement or deterioration; and

(j) comply with applicable Laws other than with respect to the failure of such compliance as would not reasonably be expected to have, individually or in the aggregate, a Trustee Material Adverse Effect.

8.3 Consents; Approvals.

(a) The Trustee and Purchaser will use their commercially reasonable efforts to obtain at the earliest practicable date all consents and approvals contemplated by this Agreement, including the consents and approvals referred to in Section 5.2(b), consents required to transfer to Purchaser the Permits that, by their terms, require consent for transfer, consents required to renew or replace the surety bonds, and the Necessary Consents, except that neither the Trustee nor Purchaser will be obligated to pay any consideration therefor to any third party from whom consent or approval is requested or to initiate any litigation or proceedings to obtain any such consent or approval. Each Party will use commercially reasonable efforts to furnish to the other Party all information required for any application or other filing to be made pursuant to any applicable Law for purposes of obtaining any such consents or approvals in connection with the Transaction. Each Party will promptly inform the other Party of any oral communication with, and provide copies of written communications with, any Governmental Body regarding any such applications or filings. No Party will independently participate in any formal meeting with any Governmental Body in respect of any such filings, investigation, or other inquiry without giving the other Party prior written notice of the meeting and, to the extent permitted by such Governmental Body, the opportunity to attend, participate, or both.

(b) The Parties will consult and cooperate with one another to the extent permitted by Law in connection with any filing with or to a Governmental Body to be made in connection with the Transaction or other agreements involving any of the Parties that are intended to be consummated concurrently with the Transaction, including: (i) engaging in pre-filing discussions with the Governmental Body, as deemed advisable by the Parties; (ii) promptly preparing any filing and making any draft and final filings required or deemed advisable in connection with the Governmental Body review or approval process; and (iii) providing, within the time periods imposed by Law, any information reasonably requested by the Governmental Body in connection with the review or approval process.

8.4 Further Assurances. Subject to the other provisions of this Agreement, Purchaser and the Trustee will each use commercially reasonable efforts to (a) take all actions necessary or appropriate to consummate the Transaction, (b) provide the other Party with reasonable cooperation and take such actions as the other Party may reasonably request in connection with the consummation of the Transaction, (c) following the Closing, execute and deliver such additional documents, instruments, assignments, conveyances and assurances, and take such further actions as may be reasonably required to carry out the provisions of this Agreement and give effect to the Transaction, and (d) cause the fulfillment at the earliest practicable date of all of the conditions to its obligations to consummate the Transaction.

8.5 Confidentiality. Purchaser acknowledges that Evaluation Material (as defined in

the Confidentiality Agreement) has been, and in the future will be, provided to it in connection with this Agreement, including under Section 8.1, and is subject to the terms of the confidentiality agreement dated November 16, 2016 between the Company and Purchaser (the “Confidentiality Agreement”), the terms of which are incorporated herein by reference.

8.6 Casualty Loss. Notwithstanding any provision in this Agreement, if at or prior to the Closing Date, any material portion of the Purchased Assets or the Business is (i) condemned or taken by eminent domain or (ii) is damaged or destroyed by fire, flooding, storm or other act of God, any act of terrorism or any other casualty event (each of the foregoing, a “Casualty Event”), the Trustee shall immediately notify Purchaser of such Casualty Event (the “Casualty Notice”). The Trustee and the Purchaser shall have the right to terminate this Agreement without any liability by delivering written notice thereof to the other Party within ten (10) days of the Trustee’s delivery of a Casualty Notice (and Purchaser shall have the right to terminate this Agreement within ten (10) days of learning of a Casualty Event in the event a Casualty Notice is not provided). If neither the Trustee nor the Purchaser elects to terminate this Agreement by delivering written notice thereof to the other Party within such ten (10) day period, then the Parties shall be deemed to accept such Casualty Event and waive their right to terminate this Agreement on account of such Casualty Event pursuant to this Section 8.6. In such event, the Parties shall proceed to consummate the transactions contemplated hereby at the Closing in accordance with this Agreement without any modification, change or adjustment to the Purchase Price or any of the other terms or conditions hereof, and Purchaser shall be assigned any rights, claims and causes of action with respect to any such Casualty Event and any insurance proceeds recoverable as a result of any such Casualty Event.

IX. CONDITIONS TO CLOSING

9.1 Conditions Precedent to Obligations of Purchaser. The obligation of Purchaser to consummate the Transaction is subject to the fulfillment, at or prior to the Closing, of each of the following conditions (any or all of which may be waived by Purchaser in whole or in part to the extent permitted by applicable Law):

(a) (i) the representations and warranties of the Trustee contained in this Agreement that are not qualified by materiality or Trustee Material Adverse Effect or similar qualification shall be true and correct in all material respects on and as of the Closing, except to the extent expressly made as of an earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date, and (ii) the representations and warranties of the Trustee contained in this Agreement that are qualified by materiality or Trustee Material Adverse Effect or similar qualification shall be true and correct in all respects on and as of the Closing, except to the extent expressly made as of an earlier date, in which case such representations and warranties shall be true and correct in all respects as of such earlier date, and the Purchaser shall have received a certificate signed by the Trustee on behalf of the Trustee and the Debtors, dated the Closing Date, to the foregoing effect;

(b) the Trustee and Debtors shall have performed and complied in all material respects with all obligations and agreements required in this Agreement to be performed or complied with by any of them prior to or on the Closing Date, and the Purchaser shall have received a certificate signed by the Trustee on behalf of the Trustee and the Debtors, dated the

Closing Date, to the foregoing effect;

(c) all Permits in force and effect as of the date of this Agreement shall be in force and effect and sold, transferred and assigned (to the extent transferable) to, or renewed or amended in the name of Purchaser, without any material modification;

(d) the Bankruptcy Court shall have approved assumption and assignment to Purchaser of all Purchased Contracts designated by Purchaser for assumption and assignment at Closing pursuant to the express terms of the Sale Order or other order of the Bankruptcy Court;

(e) the Purchaser shall have reached mutually acceptable agreements with the Debtors' surety companies and other bond and letter of credit providers, including Westchester Fire Insurance Company, Ironshore, Lexon and Bond Safeguard, concerning existing bonds and letters of credit, which shall include their consensual release of cash collateral under bonds posted by such surety companies to Purchaser;

(f) there shall be no outstanding material infractions or violations under any Environmental Law;

(g) Purchaser shall have received, from a title insurance company of its choosing, a title insurance policy in form and substance acceptable to Purchaser in respect of the Owned Real Property;

(h) Purchaser shall have obtained and bound policies of insurance, from companies of its choosing, covering the Purchased Assets in amounts and on terms and conditions acceptable to Purchaser;

(i) the Trustee shall have delivered, or caused to be delivered, to Purchaser all of the items set forth in Section 4.2.

9.2 Conditions Precedent to Obligations of the Trustee. The obligations of the Trustee to consummate the Transaction are subject to the fulfillment, at or prior to the Closing, of each of the following conditions (any or all of which may be waived by the Trustee in whole or in part to the extent permitted by applicable Law):

(a) (i) the representations and warranties of Purchaser contained in this Agreement that are not qualified by materiality or Purchaser Material Adverse Effect or similar qualification shall be true and correct in all material respects on and as of the Closing, except to the extent expressly made as of an earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date, and (ii) the representations and warranties of Purchaser contained in this Agreement that are qualified by materiality or Purchaser Material Adverse Effect or similar qualification shall be true and correct in all respects on and as of the Closing, except to the extent expressly made as of an earlier date, in which case such representations and warranties shall be true and correct in all respects as of such earlier date, and the Trustee shall have received a certificate signed by an authorized officer of Purchaser on behalf of Purchaser, dated the Closing Date, to the foregoing effect;

(b) Purchaser shall have performed and complied in all material respects with

all obligations and agreements required in this Agreement to be performed or complied with by Purchaser prior to or on the Closing Date, and the Trustee shall have received a certificate signed by an authorized officer of Purchaser on behalf of Purchaser, dated the Closing Date, to the foregoing effect;

(c) the Bankruptcy Court shall have entered the Bidding Procedures Order and the Sale Order, and the Sale Order shall be final and shall have not been stayed or modified in any material respect as of the Closing Date; and

(d) Purchaser shall have delivered to the Trustee all of the items set forth in Section 4.3.

9.3 Conditions Precedent to Obligations of Purchaser and the Trustee. The obligations of Purchaser and the Trustee to consummate the Transaction are subject to the fulfillment, at or prior to the Closing, of each of the following conditions (any or all of which may be waived by Purchaser and the Trustee in whole or in part to the extent permitted by applicable Law):

(a) there shall not be in effect any Order by a Governmental Body restraining, enjoining or otherwise prohibiting the consummation of the Transaction;

(b) all consents and approvals of any Governmental Body necessary to the consummation of the transactions contemplated by this Agreement shall have been obtained and shall be in full force and effect; and

(c) the Bankruptcy Court shall have entered the Bidding Procedures Order and the Sale Order, and the Sale Order shall be final and shall not have been stayed or modified in any material respect as of the Closing Date.

9.4 Frustration of Closing Conditions. No Party may rely on the failure of any condition set forth in Sections 9.1, 9.2 or 9.3, as the case may be, if such failure was caused by such Party's failure to comply with any provision of this Agreement.

X. TAXES

10.1 Transfer Taxes. All documentary, stamp, transfer, motor vehicle registration, sales, use, excise and other similar non-income Taxes and all filing and recording fees (and any penalties and interest associated with such Taxes and fees) arising from or relating to the consummation of the Transaction (collectively, "Transfer Taxes") will be borne by Purchaser, regardless of the Party on whom liability is imposed under the provisions of the Laws relating to such Transfer Taxes; provided that the Parties will seek waivers of Taxes otherwise applicable in respect of transactions similar to the Transaction.

10.2 Purchase Price Allocation.

(a) As promptly as practicable after the Closing Date, but no later than 90 days thereafter, Purchaser will prepare and deliver to the Trustee, an allocation schedule setting forth the amounts to be allocated among the Debtors and among the Purchased Assets of each

Debtor, pursuant to (and to the extent necessary to comply with) Section 1060 of the Code and the applicable regulations promulgated thereunder (or, if applicable, any similar provision under state, local or foreign Law or regulation) (the “Proposed Allocation Statement”). The Trustee will have twenty (20) Business Days following delivery of the Proposed Allocation Statement during which to notify Purchaser in writing (an “Allocation Notice of Objection”) of any objections to the Proposed Allocation Statement, setting forth in reasonable detail the basis of his objections. If the Trustee fails to deliver an Allocation Notice of Objection in accordance with this Section 10.2(a), the Proposed Allocation Schedule will be conclusive and binding on all Parties and will become the “Final Allocation Statement.” If the Trustee submits an Allocation Notice of Objection, then for twenty (20) Business Days after the date Purchaser receives the Allocation Notice of Objection, Purchaser and the Trustee will use their commercially reasonable efforts to agree on the allocations. Failing such agreement within twenty (20) Business Days of such notice, the unresolved allocations will be submitted to an independent, internationally recognized accounting firm mutually agreeable to Purchaser and the Trustee, which firm will be instructed to determine its best estimate of the allocation schedule based on its determination of the unresolved allocations and provide a written description of the basis for its determination within forty-five (45) Business Days after submission, such written determination to be final, binding and conclusive. The fees and expenses of such accounting firm will be apportioned fifty percent (50%) to the Trustee and fifty percent (50%) to Purchaser.

(b) The Trustee, on behalf of the Debtors, and Purchaser and Purchaser’s Affiliates will report, act, and file Tax Returns (including, but not limited to IRS Form 8594) in all respects and for all purposes consistent with such allocation as determined pursuant to this Section 10.2. Except as set forth below, neither the Trustee nor Purchaser will take any position (whether in audits, tax returns or otherwise) that is inconsistent with such allocation unless required to do so by applicable Law. Notwithstanding the foregoing, no such allocation shall bind the Trustee or any party claiming an interest in the proceeds of the Transaction for purposes of determining the proper distribution of such proceeds in the Bankruptcy Case.

10.3 Certain Periodic Non-Income Taxes.

(a) With respect to any real or personal property or other periodic Taxes not based on income or receipts (“Periodic Non-Income Taxes”) that are assessed on, or in respect of, the Purchased Assets and attributable to any period that begins after the Closing Date, if the Trustee pays such Periodic Non-Income Taxes, as promptly as practicable after delivery to Purchaser of proof of such payment, Purchaser will pay to the Trustee the amount of such Periodic Non-Income Taxes paid by the Trustee. With respect to any Periodic Non-Income Taxes that are assessed on, or in respect of, the Purchased Assets and attributable to any period that ends on or prior to the Closing Date, if Purchaser pays such Periodic Non-Income Taxes, as promptly as practicable after delivery to the Trustee of proof of such payment, the Trustee will pay to Purchaser the amount of such Periodic Non-Income Taxes paid by Purchaser, but only to the extent such amount was not taken into account to determine any amount otherwise payable to the Trustee under any other provision of this Agreement.

(b) With respect to any Periodic Non-Income Taxes that are assessed on, or in respect of, the Purchased Assets and attributable to any period which includes but does not end on the Closing Date (a “Straddle Period”): (i) if the Trustee pays such Periodic Non-Income

Taxes, as promptly as practicable after delivery to Purchaser of proof of such payment, Purchaser will pay to the Trustee the amount of such Periodic Non-Income Taxes paid by the Trustee that are attributable to the portion of such Straddle Period beginning after the Closing Date (the “Post-Closing Straddle Period”); and (ii) if Purchaser pays such Periodic Non-Income Taxes, as promptly as practicable after delivery to the Trustee of proof of such payment, the Trustee will pay to Purchaser the amount of such Periodic Non-Income Taxes paid by Purchaser that are attributable to the portion of such Straddle Period up to and including the Closing Date (the “Pre-Closing Straddle Period”), but only to the extent such amount was not taken into account to determine any amount otherwise payable to the Trustee under any other provision of this Agreement. For purposes of this Section 10.3(b), the amount of Periodic Non-Income Taxes attributable to a Pre-Closing Straddle Period will be based upon the ratio of the number of days in the Pre-Closing Straddle Period to the total number of days in the Straddle Period, and the amount of Periodic Non-Income Taxes attributable to a Post-Closing Straddle Period will be based upon the ratio of the number of days in the Post-Closing Straddle Period to the total number of days in the Straddle Period.

(c) The Party that has the primary obligation to do so under applicable Law will timely pay to the applicable Governmental Body any Periodic Non-Income taxes covered by this Section 10.3.

10.4 Cooperation and Audits. Purchaser, its Affiliates and the Trustee will cooperate in good faith with each other regarding Tax matters (including the execution of appropriate powers of attorney) and will make available to the other as reasonably requested all information, records and documents relating to Taxes governed by this Agreement until the expiration of the applicable statute of limitations or extension thereof or the conclusion of all audits, appeals or litigation with respect to such Taxes.

XI. MISCELLANEOUS

11.1 No Survival of Representations and Warranties. The Parties agree that the representations and warranties contained in this Agreement will not survive the Closing hereunder, and neither Party will have any liability to the other after the Closing for any breach thereof. The Parties agree that the covenants contained in this Agreement to be performed at or after the Closing will survive the Closing hereunder until the expiration of the applicable statute of limitations or for such shorter period explicitly specified therein, and each Party will be liable to the other after the Closing for any breach thereof.

11.2 Expenses. Except as otherwise expressly provided in this Agreement, whether or not the Transaction is consummated, each of the Trustee and Purchaser will bear its own expenses incurred in connection with the negotiation and execution of this Agreement and the Transaction Documents and the consummation of the Transaction and all proceedings incident thereto.

11.3 Submission to Jurisdiction; Consent to Service of Process. (a) Without limiting any Party’s right to appeal any order of the Bankruptcy Court, (i) the Bankruptcy Court will retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or

default hereunder, or the Transaction, and (ii) any and all Legal Proceedings related to the foregoing will be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court for such purposes; provided that if the Bankruptcy Cases have been closed pursuant to Section 350 of the Bankruptcy Code, the Parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the Delaware Court of Chancery and any state appellate court therefrom within the State of Delaware or the United States District Court for the District of Delaware and any appellate court from any of them, for the resolution thereof. The Parties hereby irrevocably waive, to the fullest extent permitted by applicable Law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the Parties agrees that a judgment in any such Legal Proceeding may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

(b) Each of the Parties hereby consents to process being served by any Party to this Agreement in any Legal Proceeding by delivery of a copy thereof in accordance with the provisions of Section 11.7, except that such service will not be effective until the actual receipt thereof by the Party being served.

11.4 Waiver of Right to Trial by Jury. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW THAT CANNOT BE WAIVED, EACH PARTY WAIVES, AND COVENANTS THAT IT WILL NOT ASSERT (WHETHER AS PLAINTIFF, DEFENDANT OR OTHERWISE), ANY RIGHT TO TRIAL BY JURY IN ANY FORUM IN RESPECT OF ANY ISSUE, CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING IN WHOLE OR IN PART UNDER, RELATED TO, BASED ON OR IN CONNECTION WITH THIS AGREEMENT, ANY TRANSACTION DOCUMENT OR THE SUBJECT MATTER HEREOF OR THEREOF, WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER SOUNDING IN TORT OR CONTRACT OR OTHERWISE. ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 11.4 WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF EACH SUCH PARTY TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

11.5 Entire Agreement; Amendments and Waivers. This Agreement (including any Exhibits and Schedules hereto) and the other documents delivered pursuant hereto represent the entire understanding and agreement among the Parties with respect to the subject matter hereof and supersede all prior discussions and agreements among the Parties with respect to the subject matter hereof. This Agreement can be amended, supplemented or changed, and any provision hereof can be waived, only by written instrument making specific reference to this Agreement signed by the Party against whom enforcement of any such amendment, supplement, modification or waiver is sought. No action taken pursuant to this Agreement, including any investigation by or on behalf of any Party, will be deemed to constitute a waiver by the Party taking such action of compliance with any representation, warranty, covenant or agreement contained herein. The waiver by any Party of a breach of any provision of this Agreement will not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy hereunder will operate as a waiver thereof, nor will any single or partial exercise of such right, power or remedy by such Party preclude any other or

further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by Law.

11.6 Governing Law. This Agreement will be governed by and construed in accordance with the Laws of the State of Delaware applicable to contracts made and performed in such State, without regards to its conflict of Laws principles.

11.7 Notices. All notices and other communications under this Agreement will be in writing and will be deemed given (a) when delivered by hand (with written confirmation of receipt), (b) when sent by email of a PDF document (with confirmation of transmission), or (c) one Business Day following the day sent by nationally recognized overnight courier (with written confirmation of receipt), in each case at the following addresses (or to such other address as a Party may have specified by notice given to the other Parties pursuant to this provision):

If to the Trustee, to:

Paul E. Harner, Esq.
Ballard Spahr LLP
919 Third Avenue
37th Floor
New York, NY 10022
Attention: Paul E. Harner, Esq.
Email: harnerp@ballardspahr.com

with a copy (which will not constitute notice) to:

Ballard Spahr LLP
1735 Market Street
51st Floor
Philadelphia, PA 19103-7599
Attention: Vincent J. Marriott, III, Esq.
Email: marriott@ballardspahr.com

If to Purchaser, to:

ERP Strategic Minerals, LLC
15 Appledore Lane
Natural Bridge, VA 24578
Attention: Thomas M. Clarke
Email: tom.clarke@kissito.org

with a copy (which will not constitute notice) to:

Dentons US LLP
1221 Avenue of the Americas
New York, NY 10020
Attention: Oscar N. Pinkas

Email: oscar.pinkas@dentons.com

11.8 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any Law or public policy, all other terms or provisions of this Agreement will nevertheless remain in full force and effect so long as the economic or legal substance of the Transaction is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties will negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the Transaction are consummated as originally contemplated to the greatest extent possible.

11.9 Assignment. This Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Nothing in this Agreement will create or be deemed to create any third party beneficiary rights in any Person or entity not a Party. No assignment of this Agreement or of any rights or obligations hereunder may be made by either the Trustee or Purchaser (by operation of Law or otherwise) without the prior written consent of the other Party and any attempted assignment without the required consents will be void, except that (a) Purchaser may assign some or all of its rights or delegate some or all of its obligations hereunder to one or more Affiliates and (b) the Trustee may assign some or all of his rights or delegate some or all of his obligations hereunder in accordance with the terms of the Sale Order. No assignment of any obligations hereunder will relieve the Parties of any such obligations. Upon any such permitted assignment, the references in this Agreement to the Trustee or Purchaser will also apply to any such assignee unless the context otherwise requires.

11.10 Non-Recourse. Neither the Trustee, individually, nor any past, present or future director, officer, employee, incorporator, member, partner, equityholder or Affiliate of the Debtors will have any liability for any obligations or liabilities of the Trustee, as trustee, or the Debtors under this Agreement or any agreement entered into in connection herewith of or for any claim based on, in respect of, or by reason of, the transactions contemplated hereby and thereby.

11.11 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. Signatures delivered by electronic means will have the same force and effect as manual signatures delivered in person.

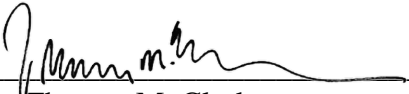
11.12 Time Is of the Essence. With respect to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

[signature page follows]

IN WITNESS WHEREOF, each Party has caused its duly authorized officer to execute this Agreement as of the Effective Date.

PURCHASER:

ERP Strategic Minerals LLC

By:  _____

Name: Thomas M. Clarke

Title: Authorized Signatory

THE TRUSTEE:

By: _____

Name: Paul E. Harner, as Trustee

IN WITNESS WHEREOF, each Party has caused its duly authorized officer to execute this Agreement as of the Effective Date.

PURCHASER:
ERP Strategic Minerals LLC

THE TRUSTEE:



By: _____
Name: Thomas M. Clarke
Title: Authorized Signatory

By: _____
Name: Paul E. Harner, as Trustee

Schedule A
(other Debtors)

Industrial Minerals, LLC
Molycorp Advanced Water Technologies, LLC
PP IV Mountain Pass II, Inc.
PP IV Mountain Pass Inc.
RCF IV Speedwagon Inc.