IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: US MAGNESIUM LLC, Debtor.[1]	Chapter 11 Case No. 25-11696 (BLS) **Hearing Date: October 6, 2025 at 11:00 am (ET)** **Objection Deadline: September 29, 2025 at 4:00 pm (ET)**

DEBTOR'S MOTION FOR ENTRY OF (I) AN ORDER (A) APPROVING BID PROCEDURES IN CONNECTION WITH THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS, (B) APPROVING THE FORM AND MANNER OF NOTICE THEREOF, (C) SCHEDULING AN AUCTION AND SALE HEARING, (D) APPROVING PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF CONTRACTS AND LEASES, AND (E) GRANTING RELATED RELIEF AND (II) AN ORDER (A) APPROVING THE STALKING HORSE APA BETWEEN THE DEBTOR AND THE STALKING HORSE BIDDER, (B) AUTHORIZING THE SALE TO THE STALKING HORSE BIDDER OR THE SUCCESSFUL BIDDER OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS, (C) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CONTRACTS AND LEASES, AND (D) GRANTING RELATED RELIEF

The above-captioned debtor and debtor in possession, US Magnesium LLC (the "**Debtor**"), moves (the "**Motion**") this Court, pursuant to sections 105(a), 363, 365, and 503 of title 11 of the United States Code (the "**Bankruptcy Code**"), Rules 2002, 6004, 6006, 9006, 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") and Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure (the "**Local Rules**"), for entry of an order, substantially in the form attached hereto as **Exhibit A** (the "**Bid Procedures Order**"), (i)(a) approving the bid procedures attached as **Exhibit 1** to the Bid Procedures Order (the "**Bid Procedures**") in connection with the proposed sale of substantially all the Debtor's assets (the

[1] The last four digits of the Debtor's federal tax identification number are 5446. The Debtor's service address for the purpose of this chapter 11 case is: 238 N. 2200 W. Salt Lake City, UT 84116.

"**Sale**"), (i)(b) approving the form and manner of notice thereof; (i)(c) scheduling an auction (the "**Auction**") if the Debtor receives two or more timely and acceptable Qualified Bids (as defined below) and scheduling a hearing to consider approval of the Sale (the "**Sale Hearing**"), (i)(d) establishing procedures for the assumption and assignment of executory contracts and unexpired leases, including notice of proposed cure amounts; and (i)(e) granting related relief; and, pursuant to Bankruptcy Code sections 105, 363, and 365 and Bankruptcy Rules 2002, 6004, and 6006, for entry of an order (ii)(a) approving the Stalking Horse APA (as defined below) between the Debtor and the Stalking Horse Bidder (as defined below), (ii)(b) authorizing the Sale to the Stalking Horse Bidder or the Successful Bidder, after the Auction, if necessary, free and clear of liens, claims, interests and encumbrances, (ii)(c) authorizing the assumption and assignment of certain executory contracts and unexpired leases to either the Stalking Horse Bidder or a Successful Bidder, and (ii)(d) granting related relief. In support of this Motion, the Debtor relies on and incorporates by reference the *Declaration of Ron Thayer in Support of First Day Motions* [D.I. No. 4] (the "**First Day Declaration**") and further represents as follows:

Jurisdiction and Venue

1. This Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

I. Procedural Background

2. On September 10, 2025 (the "**Petition Date**"), the Debtor commenced the above captioned case (the "**Chapter 11 Case**") by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor is authorized to continue to operate its business and manage

its properties as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The circumstances leading to the filing of this Chapter 11 Case is set forth in detail in the First Day Declaration.

3. On September 12, 2025, this Court entered the *Interim Order (I) Authorizing the Debtor to (A) Obtain Postpetition Financing, and (B) Grant Senior Secured Priming Liens and Superpriority Administrative Expense Claims; (II) Granting Adequate Protection; (III) Modifying the Automatic Stay; (IV) Scheduling Final Hearing; and (G) Granting Related Relief* [D.I. No. 32] (the "**Interim DIP Order**"), which authorized the Debtor to obtain post-petition financing ("**DIP Financing**") from Wells Fargo Bank, National Association ("**Wells Fargo**") pursuant to that certain Ratification and Amendment Agreement attached to the Interim DIP Order as Exhibit A (the "**DIP Agreement**"). The DIP Financing consists of two tranches of $5 million term loans-Tranche A DIP Term Loans and Tranche B DIP Term Loans (each as defined in the DIP Agreement). The Debtor's sole equity owner, the Renco Group, Inc. ("**Renco**"), holds a 100% participation interest in the Tranche B DIP Term Loans.

4. The DIP Financing obtained under the DIP Agreement will provide the Debtor with sufficient liquidity to effectuate the process contemplated by this Motion for the going concern sale of all or substantially all of the Debtor's assets (the "**Sale Process**"), which the Debtor submits will best maximize the value of its bankruptcy estate for the benefit of all stakeholders.

II. General Background

A. General Background

5. The Debtor operates a facility on the Great Salt Lake in Rowley, Utah, where historically the Debtor has produced primary magnesium and magnesium alloys, as well as other chemicals and mineral salts such as liquid chlorine, and lithium carbonate (the "**Facility**"). The

Debtor's current operations, for reasons described in the First Day Declaration, are limited to the production of dust suppressants, de-icing products, and raw sodium chloride. As of the Petition Date, the Debtor employed 22 (22) full-time and two (2) part-time employees.

6. The Debtor operates its business pursuant to a certain Mineral Lease & Option Agreement with the State of Utah's Division of Forestry, Fire & State Lands (the "**State of Utah**"), originally executed by their respective predecessors-in-interest and which has been in place since 1961 (the "**Mineral Lease**"). Prior to the Petition Date, the State of Utah commenced informal adjudicative proceedings to terminate the Mineral Lease, which proceedings are now stayed by virtue of section 362(a) of the Bankruptcy Code. The Debtor seeks to assume and assign the Mineral Lease to the Successful Bidder (as defined in the Bid Procedures) in connection with the Sale Process.

7. The Debtor is also subject to the Consent Decree (as defined in First Day Declaration) entered into with the United States on behalf of the Environmental Protection Agency ("**EPA**") which resolved heavily contested litigation over various alleged violations of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901-6992k (the "RCRA") and the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9605 ("**CERCLA**"). The Consent Decree provides, among other things, for certain funds to be deposited into five special accounts (the "**Special Accounts**") to serve as financial assurances for the completion of work required under the Consent Decree, which funds can be used under certain circumstances to reimburse the Debtor for costs of completing work required under the Consent Decree. In connection with the Sale Process, the Stalking Horse Bidder (defined herein) seeks to assume the Debtor's rights and obligations under the Consent Decree, subject to its reaching agreement with the EPA on a reasonable and mutually acceptable plan for completing the work

required thereunder, as well as an agreement in respect of release of funds from the Special Accounts.

B. Capital Structure

8. The Debtor is indebted to Wells Fargo pursuant to that certain Loan and Security Agreement, dated June 24, 2002 (as recently amended by the DIP Agreement and, as may be further amended, supplemented, or otherwise modified from time to time, the ("**Prepetition Credit Agreement**"). As of September 9, 2025, the Debtor had approximately $67,171,885.28 million of total funded debt obligations under the Prepetition Credit Agreement, consisting of (i) $40,553,244.80 in principal and interest due under the revolving loans, (ii) $25,817,052.50 in principal and interest under a term loan tranche in which Renco holds a 100% participation interest ("**Term Loan C**"), and (iii) outstanding Letters of Credit in the amount of $821,588 (the "**Letters of Credit**"). Obligations under the Prepetition Credit Agreement are secured by substantially all of the Debtor's assets as more particularly described in the Interim DIP Order.

9. The Debtor is also indebted to an affiliate of Renco—Renco Global Capital, Inc. ("**Renco Global**")—under that certain Subordinated Loan Agreement dated as of June 26, 2023 by and among the Debtor and Renco Global (as may be amended, supplemented or otherwise modified from time to time, the "**Renco Global Credit Agreement**"). As of the Petition Date, the Debtor has approximately $45 million of total funded debt obligations under the Renco Credit Agreement, which are secured by junior liens in favor of Renco Global in substantially all of the Debtor's assets.

10. In addition to the foregoing, the Debtor is also indebted to Renco under that certain Subordinated Loan Agreement dated August 28, 2025 (as may be amended, supplemented, or modified from time to time, the "**Subordinated Loan Agreement**"). As of the Petition Date, the

Debtor has approximately $45 million of total funded debt obligations under the Subordinated Loan Agreement, which are secured by junior liens in favor of Renco in substantially all of the Debtor's assets.

C. The Stalking Horse Bid

11. The Debtor and LiMag Holdings, LLC, as purchaser (the "**Stalking Horse Bidder**") have entered into an Asset Purchase Agreement which is attached hereto as **Exhibit B** (the "**Stalking Horse APA**"). In the Stalking Horse APA, the Stalking Horse Bidder, which is an affiliate of the Renco Group, Inc., proposes to purchase substantially all of the Debtor's assets (the "**Assets**") for the following Purchase Price considerations (the "**Purchase Price**"):

a. a credit bid equal to the total aggregate amount due to Renco in respect of its 100% participation interests in the Term Loan C and the Trance B DIP Term Loans the "**Credit Bid**");

b. assumption of all of the Debtor's obligations under each of the Renco Global Credit Agreement and the Subordinated Loan Agreement;

c. assumption of all of the Debtor's obligations under the Prepetition Credit Agreement and DIP Agreement (other than in respect of Term Loan C and the Tranche B DIP Term Loans satisfied by the Credit Bid);

d. assumption of the Debtor's obligations under its defined benefit pension plan which it maintains subject to Title IV of the Employee Retirement Income Security Act of 1974 ("**ERISA**");

e. assumption of the Debtor's obligations under the Consent Decree, subject to agreement with the EPA as described in Paragraph 7 of this Motion;

f. certain Cash Consideration and Cure Costs (each as defined in the Stalking Horse APA), and the assumption of all other Assumed Liabilities as such term is defined in the Stalking Horse APA.

12. The Purchase Price will serve as a competitive baseline of recovery for the Debtor's stakeholders. The Debtor submits that the proposed Sale transaction with the Stalking Horse Bidder, if approved, will generate significant value for the Debtor's estate and, among other things, satisfy a meaningful portion of the prepetition claims against the Debtor and pave the way for the best outcome to this case.

13. The Debtor now seeks authority to market test the transactions contemplated by the Stalking Horse APA (the "**Stalking Horse Bid**") to ensure that the Debtor obtains the highest or otherwise best offer for the Debtor's assets. If approved, the bid procedures (attached as Exhibit 1 to the Bid Procedures Order (the "**Bid Procedures**") will enable the Debtor to move expeditiously towards the best resolution of this case. The Debtor's Independent Manager, in consultation with the Debtor's proposed Chief Restructuring Officer and proposed Investment Banker, has likewise reviewed the terms and conditions of the Stalking Horse APA and concurs with the Debtor that the Sale, the Stalking Horse APA, the Bid Procedures, and the related relief requested in this Motion are in the best interests of the Debtor's estate and its stakeholders. Accordingly, the Debtor requests that the Court grant this Motion.

Relief Requested

14. By this Motion, the Debtor requests, pursuant to Bankruptcy Code sections 105, 363, 365 and 503 and Bankruptcy Rules 2002, 6004, 6006, 9006, 9007 and 9014, the entry of (A) an order (i) establishing bid procedures for the Sale of the Assets, (ii) establishing procedures relating to the assumption and assignment of executory contracts and unexpired leases, (iii)

approving the form and manner of sale, cure, and other related notices, and (iv) scheduling the Auction (if necessary) and Sale Hearing; and (B) an order (i) approving the Sale of the Assets free and clear of all liens, claims, encumbrances and interests; (ii) approving the assumption and assignment of certain executory contracts and unexpired leases to the Successful Bidder; and (iii) granting related relief.

15. The Debtor seeks entry of the Bid Procedures Order:

(a) authorizing and approving the Bid Procedures attached to the Bid Procedures Order as Exhibit 1 in connection with the sale of substantially all of the Debtor's Assets;

(b) approving the form and manner of notice of an Auction and Sale Hearing with respect to the Sale, attached as Exhibit 2 to the Bid Procedures Order (the "**Sale Notice**");

(c) scheduling the Auction and Sale Hearing;

(d) approving procedures for the assumption and assignment of executory contracts and unexpired leases (collectively, the "**Contracts**") in connection with the Sale; and

(e) granting related relief.

16. In addition, the Debtor will seek entry of the Sale Order at the conclusion of the Sale Hearing:

(a) authorizing and approving the Sale of the Assets to the Successful Bidder (as defined in the Bid Procedures) on the terms substantially set forth in the Successful Bid;

(b) authorizing and approving the Sale free and clear of liens, claims, encumbrances, and other interests to the extent set forth in the Successful Bid;

(c) authorizing the assumption and assignment of certain Contracts as provided therein and/or in the Stalking Horse APA (collectively, the "**Assumed Contracts**"); and

(d) granting any related relief.

17. The Debtor reserves the right to file and serve any supplemental pleading or declaration that the Debtor deems appropriate or necessary in its reasonable business judgment, including any pleading summarizing the competitive bidding and sale process and the results thereof, in support of its request for entry of the Sale Order before the Sale Hearing.

<u>The Proposed Sale</u>

I. The Proposed Stalking Horse APA and Contemplated Section 363 Sale.

18. The Debtor entered into arm's-length negotiations with the Stalking Horse Bidder to finalize the mutual and agreeable terms of the Stalking Horse Bid for the Sale. The Debtor believes a prompt Sale of the Assets represents the best alternative available for all stakeholders in this case. Moreover, it is critical for the Debtor to execute on its proposed Sale within the timeframe contemplated by the Stalking Horse APA and DIP Order. Under the DIP Order, the Debtor is required to obtain entry of the Sale Order no later than sixty (60) days after the Petition Date.

19. The Debtor requests that the Court approve the following general timeline:

(a) ***Contract Cure Objection Deadline***: 4:00 p.m. (ET) seven (7) calendar days from service of the Contract Notice (as defined below), as the deadline to object to the cure amounts listed in the Contract Notice (any such objection, a "**Cure Objection**");

(b) ***Bid Deadline***: **<u>October 24, 2025 at 12:00 p.m. (ET)</u>** as the deadline by which bids for the Assets (as well as the deposit and all other documentation required under the Bid Procedures for Qualified Bidders (as defined in the Bid Procedures)) must be actually received (the "**Bid Deadline**");

(c) ***Auction***: **<u>October, 31, 2025, at 10:00 a.m. (ET)</u>**, as the date and time the Auction, if needed, will be held at the offices of Gellert Seitz Busenkell & Brown, LLC, 1201 N. Orange St., 3rd Floor, Wilmington, DE 19801;

(d) ***Sale Objection/Assumption and Assignment Objection Deadline***: **<u>October 24, 2025 at 4:00 p.m. (ET)</u>** as the deadline to object to the Sale or to object to the assumption and assignment of Contracts in connection with the Sale (other than Cure Objections);

(e) ***Sale Hearing***: on or before **<u>November 7, 2025, at T.B.D.</u>**, as the date and time for the Sale Hearing.

20. The Debtor believes that this timeline maximizes the prospect of receiving a higher or otherwise better offer without unduly prejudicing this estate. To further ensure that the Debtor's proposed Auction and Sale process maximizes value to the benefit of the Debtor's estate, the Debtor will use the time following entry of the Bid Procedures Order to actively market the Assets

in an attempt to solicit higher or otherwise better bids. The Debtor believes the relief requested by this Motion is in the best interests of its creditors, its other stakeholders, and all other parties in interest, and should be approved.

II. Material Terms of the Stalking Horse APA.

21. The following chart summarizes the terms and conditions of the Stalking Horse APA (attached hereto as **Exhibit B**) and discloses certain information:[2]

Stalking Horse APA Provision	Summary Description
Parties	**Sellers:** US Magnesium LLC **Buyer:** LiMag Holdings LLC
Purchase Price **Local Bankr. R. 6004-1(b)(iv)(N)**	Purchase Price consists of (i) the Credit Bid; (ii) assumption of all obligations owed under the Prepetition Credit Agreement (other than those satisfied in the Credit Bid); (iii) assumption of all obligations owed under the Renco Global Credit Agreement and Subordinated Loan Agreement; (iv) Cure Costs, Cash Consideration and assumption of Assumed Liabilities
Stalking Horse Protections **Local Bankr. R. 6004-1(c)(i)(C)**	None
Purchased Assets	As set forth in section 2.1 of the Stalking Horse APA
Assumed Liabilities	As set forth in section 2.3 of the Stalking Horse APA
Assumed Contracts	As set forth in section 2.1(f) of the Stalking Horse APA
Excluded Assets	As set forth in section 2.2 of the Stalking Horse APA

[2] This summary is provided for the convenience of the Court and parties in interest. To the extent there is any conflict between this summary and the Stalking Horse APA, the Stalking Horse APA shall govern in all respects. Capitalized terms used in the following summary shall have the meanings ascribed to them in the Stalking Horse APA. All references to schedules or sections in the summary shall refer to schedules or sections of the Stalking Horse APA.

Representations and Warranties	As set forth in Articles III and IV of the Stalking Horse APA
Agreements with Management **Local Bankr. R. 6004-1(b)(iv)(D)**	None
Releases **Local Bankr. R. 6004-1(b)(iv)(C)**	The Stalking Horse Bidder will acquire the Assigned Actions pursuant to section 2.1(j) of the Stalking Horse ALA and the Claims and Actions against Renco and/or its Affiliates pursuant to section 2.1(aa) of the Stalking Horse APA
Private Sale/No Competitive Bidding **Local Bankr. R. 6004-1(b)(iv)(D)**	Not Applicable
Closing and Other Deadlines **Local Bankr. R. 6004-1(b)(iv)(E)**	• Auction: on or before 55 days after the Petition Date (section 8.1(j)(i) • Sale Hearing: on or before 60 days after the Petition Date (section 8.1(j)(iii)) • Closing: on or before 90 days after the Petition Date (section 8.1(b))
Interim Arrangements with Proposed Buyer **Local Bankr. R. 6004-1(b)(iv)(G)**	None
Use of Proceeds **Local Bankr. R. 6004-1(b)(iv)(H)**	Application to outstanding indebtedness
Tax Exemption **Local Bankr. R. 6004-1(b)(iv)(I)**	Not applicable
Records Retention **Local Bankr. R. 6004-1(b)(iv)(J)**	As set forth in section 2.2 of the Stalking Horse APA
Sale of Avoidance Actions **Local Bankr. R. 6004-1(b)(iv)(K)**	Avoidance Actions (other than those against Renco and/or its Affiliates) are Excluded Assets under the Stalking Horse APA

Requested Findings as to Successor Liability **Local Bankr. R. 6004-1(b)(iv)(L)**	As set forth in section 5.10 of the Stalking Horse APA
Executory Contracts and Unexpired Leases **Local Bankr. R. 6004-1(b)(iv)(M)**	As set forth in Schedule 2.1(f) of the Stalking Horse APA
Credit Bid **Local Bankr. R. 6004-1(b)(iv)(N)**	The Purchase Price will include the Credit Bid as set forth in Paragraph 11 herein
Relief from Bankruptcy Rule 6004(h) **Local Bankr. R. 6004-1(b)(iv)(O)**	Pursuant to this Motion, the Debtor is seeking relief from Bankruptcy Rule 6004(h) in order to comply with its obligations under the Interim DIP Order to Close within five (5) days of entry of the Sale Order

The Bid Procedures Order

I. The Bid Procedures.

22. To optimally and expeditiously solicit, receive, and evaluate bids in a fair and accessible manner, the Debtor has developed and proposed the Bid Procedures, attached as Exhibit 1 to the Bid Procedures Order. The following describes the salient points of the Bid Procedures and discloses certain information:[3]

- **Bid Requirements.** To be considered a Qualified Bid, each Bid must be submitted in writing and determined by the Debtor, in its reasonable business judgment, to have satisfied the following requirements (as further stated in the Bid Procedures):

  Assets and Purchase Price: Each Bid must be a bid to purchase all substantially all of the Assets, or, if such Bid is for a subset of the Assets, the Bid must specifically identify the Assets being purchased in the Bid. Each Bid must clearly state which liabilities of the Debtor will be assumed and must clearly set forth the Purchase Price to be paid, including and identifying separately any cash and non-cash components.

[3] This summary is qualified in its entirety by the Bid Procedures attached as Exhibit 1 to the Bid Procedures Order. All capitalized terms that are used in this summary but not otherwise defined herein shall have the meanings in the Bid Procedures. To the extent there are any conflicts between this summary and the Bid Procedures, the terms of the Bid Procedures shall govern.

Deposit: Each Bid, other than the Stalking Horse Bid, must be accompanied by a cash deposit in an amount equal to ten percent (10%) of the aggregate cash purchase price of the Bid to be held in an interest-bearing escrow account to be identified and established by the Debtor (the "**Deposit**"). Any party submitting a credit bid shall not be required to post a Deposit in connection with such credit bid.

Minimum Bid: The aggregate cash consideration proposed by each Bid must equal to, or exceed, the sum of (i) the Purchase Price set forth in the Stalking Horse Bid; plus (ii) the Overbid Increment.

The Same or Better Terms: Except as otherwise provided herein each Bid must, in the Debtor's business judgment and in consultation with (a) Wells Fargo, in its capacity as DIP Lender, and (b) the representatives of any duly appointed committee of unsecured creditors ("**Committee Representatives**", and collectively with Wells Fargo, the "**Consultation Parties**") be on terms that are the same as or better than the terms of the Stalking Horse APA. Each Bid must include duly executed, non-contingent transaction documents necessary to effectuate the transactions contemplated in the Bid (the "**Bid Documents**"), which shall include either: (i) a schedule of Assumed Contracts (pursuant to the Stalking Horse APA) to the extent applicable to the Bid, and a copy of the Stalking Horse APA clearly marked to show all changes requested by the bidder (including those related to the Purchase Price and Assets to be acquired by such bidder), as well as all other material documents integral to such Bid. The Debtor may consider multiple Bids, which in the aggregate, are the same as or better than the terms of the Stalking Horse Bid.

Sources of Financing: The Bid must indicate the source of cash consideration, including proposed funding commitments and confirm that such consideration is not subject to any contingencies. The Bid should include a detailed sources and uses schedule.

Structure: The Bid must identify the structure proposed for undertaking the Sale, including the specific Assets of the Debtor, the proposed steps to accomplish such acquisition, and any financial, legal, or tax considerations upon which the Bid's proposed structure replies.

Tax Structure: The Bid must specify with particularity its tax structure, including whether it is intended to be structured in a tax-free manner or if any incremental tax liabilities will be incurred by the Debtor under the Bid.

Assumption: The Bid must specify which, if any, of the obligations of the Debtor the bidder proposes to assume. For the avoidance of doubt, any assumption of indebtedness owed under the Pre-Petition Credit Agreement, the DIP Agreement, the Renco Global Credit Agreement, or the Subordinated Loan Agreement may be assumed only with the express written consent of the respective lenders thereunder.

- **<u>Bid Deadline.</u>** Each Bid must be transmitted via email (in .pdf or similar format) or other means so as to be ***actually received*** by the Debtor, counsel to the Debtor, the Consultation

Parties, the Stalking Horse Bidder, and counsel to the Stalking Horse Bidder on or before the Bid Deadline.

- **Right to Credit Bid.** At the Auction, the Stalking Horse Bidder shall have the right to credit bid the Credit Bid Amount as defined in the Stalking Horse APA. The Stalking Horse Bidder may, but shall not be required to, notify the Debtor prior to the Bid Deadline of its intent to credit bid at the Auction, and the Debtor shall take such notice into account before seeking to cancel the Auction. Any credit bid made by a Successful Bidder (other than the Stalking Horse Bidder) must include a cash component (or otherwise provide for cash) sufficient to pay any senior liens on the collateral that is subject to the credit bid.

- **The Auction.** If the Debtor does not receive a Qualified Bid (other than the Stalking Horse Bid), the Debtor, in consultation with the Consultation Parties, will not conduct the Auction and shall designate the Stalking Horse Bidder's Qualified Bid as the Successful Bid (as defined in the Bid Procedures).

- **Bidding Increments.** The Debtor will announce at the outset of the Auction the minimum required increments for Incremental Overbids. The Debtor may, in its discretion, announce increases or reductions to Incremental Overbids at any time during the Auction.

- **Back-Up Bidder.** Notwithstanding anything in the Bid Procedures to the contrary, if an Auction is conducted, the Qualified Bidder with the next-highest or otherwise second-best Qualified Bid at the Auction for the Assets, as determined by the Debtor in the exercise of its reasonable business judgment, shall be required to serve as a back-up bidder (the "**Back-Up Bidder**"), and each Qualified Bidder shall agree and be deemed to agree to be the Back-Up Bidder if so designated by the Debtor (the "**Back-Up Bid**").

- **Highest or Otherwise Best Bid.** When determining the highest or otherwise best Qualified Bid, as compared to other Qualified Bids, the Debtor, in consultation with the Consultation Parties, may consider the following factors in addition to any other factors that the Debtor and the Consultation Parties deem appropriate: (i) the number, type, and nature of any changes to the Stalking Horse APA requested by the Qualified Bidder, including the type and amount of Assets sought and obligations to be assumed in the Bid; (ii) the amount and nature of the total consideration; (iii) the likelihood of the Bidder's ability to close a transaction and the timing thereof; (iv) the net economic effect of any changes to the value to be received by the Debtor's estate from the transaction contemplated by the Bid Documents; (v) the timing of each Qualified Bidder's proposed closing; and (vi) the tax consequences of each Qualified Bid. For the avoidance of doubt, the Debtor may consider multiple Bids which, in the aggregate, would constitute the highest or otherwise best Qualified Bid.

- **Reservation of Rights.** The Debtor reserves its rights to modify the Bid Procedures (after consultation with the Consultation Parties) in its reasonable business judgment in any manner that will best promote the goals of the bidding process, or impose, at or prior to the Auction, additional customary terms and conditions on the sale of the Assets, including cancelling the Auction or the Sale.

23. Importantly, the Bid Procedures recognize the Debtor's fiduciary obligations to maximize sale value, and, as such, do not impair the Debtor's ability to consider all Qualified Bid proposals (after consultation with the Consultation Parties), and, as noted, preserve the Debtor's right to modify the Bid Procedures (after consultation with the Consultation Parties) as necessary or appropriate to maximize value for the Debtor's estate.

II. Form and Manner of Sale Notice.

24. On or within three (3) calendar days after entry of the Bid Procedures Order, the Debtor will cause the Sale Notice to be served on the following parties or its respective counsel, if known: (a) the United States Trustee for the District of Delaware (the "**U.S. Trustee**"); (b) counsel to any statutorily appointed committee; (c) counsel to the Stalking Horse Bidder; (d) counterparties to the Contracts (the "**Contract Counterparties**"); (e) all parties who have expressed a written interest in some or all of the Assets; (f) all parties who are known or reasonably believed, after reasonable inquiry, to have asserted any lien, encumbrance, claim, or interest in the Assets; (g) the Internal Revenue Service; (h) all applicable state and local taxing authorities; (i) all the Debtor's other creditors; (j) each governmental agency that is an interested party with respect to the Sale and transactions proposed thereunder; and (k) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002.

25. The Debtor submits that the Sale Notice is reasonably calculated to provide all interested parties with timely and proper notice of the proposed Sale, including: (a) the date, time, and place of the Auction (if one is held); (b) the Bid Procedures; (c) the deadline for filing objections to the Sale and entry of the Sale Order, and the date, time, and place of the Sale Hearing; (d) a reasonably specific identification of the Assets; (e) instructions for promptly obtaining a copy of the Stalking Horse APA; (f) a description of the Sale as being free and clear of liens, claims,

interests, and other encumbrances, with all such liens, claims, interests, and other encumbrances attaching with the same validity and priority to the Sale proceeds; and (g) notice of the proposed assumption and assignment of the Contracts to the Stalking Horse Bidder pursuant to the Stalking Horse APA (or to another Successful Bidder arising from the Auction, if any).[4]

26. The Debtor further submits that notice of this Motion and the related hearing to consider entry of the Bid Procedures Order, coupled with service of the Sale Notice, the Contract Notice, and the Assumption Notice as provided for herein, constitutes good and adequate notice of the Sale in compliance with, and satisfaction of, the applicable requirements of Bankruptcy Rule 2002. The Debtor proposes that no other or further notice of the Sale shall be required. Accordingly, the Debtor requests that this Court approve the form and manner of the Sale Notice.

III. Summary of the Assumption Procedures.

27. The Debtor is also seeking approval of certain procedures to facilitate the fair and orderly assumption and assignment of the Contracts in connection with the Sale (the "**Assumption Procedures**"). Because the Bid Procedures Order sets forth the Assumption Procedures in detail, they are not restated in this Motion. Generally, however, the Assumption Procedures: (a) outline the process by which the Debtor will serve notice to all Contract Counterparties regarding the proposed assumption and assignment and related cure amounts, if any, informing such parties of its right and the procedures to object thereto; and (b) establish objection and other relevant deadlines and the manner for resolving disputes relating to the assumption and assignment of the Contracts to the extent necessary. The Successful Bidder will retain the absolute right to designate

[4] Pursuant to the Bid Procedures Order, notice of the proposed assumption and assignment of the Contracts to the Stalking Horse Bidder pursuant to the Stalking Horse APA (or to another Successful Bidder arising from the Auction, if any), the proposed cure amounts, and the right, procedures, and deadlines for objecting, will be provided in a separate notice, attached to the Bid Procedures Order as Exhibit 3 (the "**Assumption Notice**") to be sent to the applicable Contract Counterparties.

which Contracts it will assume, with the remaining Contracts likely to be rejected by the Debtor pursuant to separate motion.

Basis for Relief

I. The Relief Sought in the Bid Procedures Order Is in the Best Interests of the Debtor's Estate and Should Be Approved.

28. Courts have made clear that a debtor's business judgment is entitled to substantial deference with respect to the procedures to be used in selling an estate's assets. See In re Schipper, 933 F.2d 513, 515 (7th Cir. 1991) ("Under Section 363, the debtor in possession can sell property of the estate . . . if he has an 'articulated business justification'"); 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 Integrated Res., Inc., 147 B.R. 650, 656–7 (S.D.N.Y. 1992) (noting that bidding procedures that have been negotiated by a trustee are to be reviewed according to the deferential "business judgment" standard, under which such procedures and arrangements are "presumptively valid").

29. The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. See 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 Food Barn Stores, Inc., 107 F.3d at 564–65 (in bankruptcy sales, "a primary objective of the Code [is] to enhance the value of the estate at hand"); Integrated Res., 147 B.R. at 659 ("[I]t is a well-established principle of bankruptcy law that the objective of the bankruptcy rules and the trustee's duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.").

30. To that end, courts uniformly 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 transactions. See Integrated Res., 147

B.R. at 659 (bidding procedures "are important tools to encourage bidding and to maximize the value of the debtor's assets"); In re Fin. News Network, Inc., 126 B.R. 152, 156 (Bankr. S.D.N.Y. 1991) ("court-imposed rules for the disposition of assets . . . [should] provide an adequate basis for comparison of offers, and [should] provide for a fair and efficient resolution of bankrupt estate"); In re 995 Fifth Ave. Assoc., L.P., 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (holding that the business judgment standard protects break-up fees and other provisions negotiated in good faith).

31. At the same time, the Bid Procedures provide the Debtor with a robust opportunity to consider competing bids and select the highest or otherwise best offer for the completion of the Sale. Entering into the Stalking Horse APA with the Stalking Horse Bidder ensures that the Debtor obtains fair market value by setting a minimum purchase price for the Assets that will be tested in the marketplace. As such, creditors of the Debtor's estate can be assured that the consideration obtained will be fair and reasonable and at or above market.

32. The Debtor submits that the proposed Bid Procedures will encourage competitive bidding, are appropriate under the relevant standards governing auction proceedings and bidding incentives in bankruptcy proceedings, and are consistent with other procedures utilized in other cases. See Burtch v. Ganz (In re Mushroom Transp. Co.), 382 F.3d 325, 339 (3d Cir. 2004) (finding that a debtor had a fiduciary duty to maximize and protect the value of the estate's assets); Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.), 107 F.3d 558, 564-65 (8th Cir. 1997) (recognizing that a main goal of any proposed sale of property of a debtor's estate is to maximize value). Courts uniformly recognize that procedures established for the purpose of enhancing competitive bidding are consistent with the fundamental goal of maximizing the value of a debtor's estate. See Calpine Corp. v. O'Brien Env't Energy, Inc. (In re O'Brien Env't Energy,

Inc.), 181 F.3d 527, 536-37 (3d Cir. 1999) (noting that bidding procedures that promote competitive bidding provide a benefit to a debtor's estate); Off. Comm. of Subordinated Bondholders v. Integrated Res. Inc. (In re Integrated Res. Inc.), 147 B.R. 650, 659 (S.D.N.Y. 1992) (observing the benefit of sale procedures that "encourage bidding and . . . maximize the value of the debtor's assets").

II. The Form and Manner of the Sale Notice Should Be Approved.

33. Pursuant to Bankruptcy Rule 2002(a), the Debtor is required to provide creditors with 21 days' notice of the Sale Hearing. Pursuant to Bankruptcy Rule 2002(c), such notice must include the time and place of the Auction and the Sale Hearing and the deadline for filing any objections to the relief requested herein.

34. As noted above, within three (3) calendar days of entry of the Bid Procedures Order, the Debtor will serve the Sale Notice upon the following parties or its respective counsel, if known: (a) the U.S. Trustee; (b) any statutorily appointed committee; (c) the Stalking Horse Bidder; (d) the Contract Counterparties; (e) all parties who have expressed a written interest in some or all of the Assets; (f) all parties who are known or reasonably believed, after reasonable inquiry, to have asserted any lien, encumbrance, claim, or other interest in the Assets; (g) the Internal Revenue Service; (h) all applicable state and local taxing authorities; (i) all the Debtor's other creditors; (j) each governmental agency that is an interested party with respect to the Sale and transactions proposed thereunder; and (l) any party that has requested notice pursuant to Bankruptcy Rule 2002.

35. The Debtor submits that notice of this Motion and the related hearing to consider entry of the Bid Procedures Order, coupled with service of the Sale Notice, the Contract Notice, and the Assumption Notice constitutes good and adequate notice of the Sale in compliance with,

and satisfaction of, the applicable requirements of Bankruptcy Rule 2002. Accordingly, the Debtor requests that this Court approve the form and manner of the Sale Notice.

III. The Assumption Procedures Are Appropriate and Should Be Approved.

36. As set forth above, the Sale contemplates the assumption and assignment of the Contracts to the Stalking Horse Bidder or Successful Bidder arising from the Auction, if any. In connection with this process, the Debtor believes it is necessary to establish a process by which: (a) the Debtor and Contract Counterparties can reconcile cure obligations, if any, in accordance with section 365 of the Bankruptcy Code; and (b) such counterparties can object to the assumption and assignment of the Contracts and/or related cure amounts (the "**Assumption Procedures**").

37. As set forth in the Bid Procedures Order, the Debtor also requests that any party that fails to object to the proposed assumption and assignment of any Contract be deemed to consent to the assumption and assignment of the applicable Contract pursuant to section 365 of the Bankruptcy Code on the terms set forth in the Sale Order, along with the cure amounts identified in the Contract Notice. See In re Tabone, Inc., 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (by not objecting to sale motion, creditor deemed to consent); In re Gabel, 61 B.R. 661, 667 (Bankr. W.D. La. 1985) (same).

38. The Debtor believes that the Assumption Procedures are fair and reasonable, provide sufficient notice to the Contract Counterparties, and provide certainty to all parties in interest regarding its obligations and rights in respect thereof. Accordingly, the Debtor requests the Court approve the Assumption Procedures set forth in the Bid Procedures Order.

39. Even though not all Contracts are sought to be assumed by the Stalking Horse Bidder, the Debtor is, pursuant to the Assumption Procedures, preparing for a potential Successful Bidder to assume all Contracts at its discretion. The ultimate selection of the Contracts will be

determined by the Successful Bidder and any listing of any Contract as assumed on any list or for purposes of determining any cure amount is not final until so assumed by the Successful Bidder pursuant to the Assumption Procedures. The Debtor reserves any and all rights with respect to Contracts not so assumed and assigned pursuant to the Assumption Procedures, and may reject those Contracts or leases subject to further order of this Court.

IV. The Sale Should Be Approved as an Exercise of Sound Business Judgment.

40. Section 363(b)(1) 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)(1). A sale of the debtor's assets should be authorized pursuant to section 363 of the Bankruptcy Code if a sound business purpose exists for the proposed transaction. See Martin, 91 F.3d at 395 ("Under Section 363, the debtor in possession can sell property of the estate . . . if he has an 'articulated business justification' . . . ."); Schipper, 933 F.2d at 515; In re Lionel Corp., 722 F.2d 1063, 1070 (2d Cir. 1983); In re Telesphere Commc's, Inc., 179 B.R. 544, 552 (Bankr. N.D. Ill. 1999).

41. Once the debtor articulates a valid business justification, "[t]he business judgment rule 'is a presumption that in making the business decision the directors of a corporation acted on an informed basis, in good faith, and in the honest belief that the action was in the best interests of the company." In re S.N.A. Nut Co., 186 B.R. 98, 102 (Bankr. N.D. Ill 1995); see In re Filene's Basement, LLC, 11-13511 (KJC), 2014 WL 1713416, at *12 (Bankr. D. Del. Apr. 29, 2014) ("If a valid business justification exists, then a strong presumption follows that the agreement at issue was negotiated in good faith and is in the best interests of the estate."); Integrated Res., 147 B.R. at 656; In re Johns-Manville Corp., 60 B.R. 612, 615–16 (Bankr. S.D.N.Y. 1986) ("a presumption of reasonableness attaches to a Debtor's management decisions.").

a. A Sound Business Purpose Exists for the Sale.

42. As set forth above, the Debtor has a sound business justification for selling the Assets. First, the Debtor believes the Sale will maximize the Assets' going-concern value by allowing a party to bid on business assets that would have substantially less value on a stand-alone basis. Moreover, cure payments required in connection with assumption of the Assumed Contracts under the Stalking Horse APA will result in payment in full for a number of the Debtor's creditors.

43. Second, the sale of the Assets will be subject to competing bids, enhancing the Debtor's ability to receive the highest or otherwise best value for the Assets. Consequently, the ultimately successful bid, after being subject to a "market check" in the form of the Auction, will constitute, in the Debtor's reasonable business judgment, the highest or otherwise best offer for the Assets and will provide a greater recovery for its estate than any known or practicably available alternative. See, e.g., In re Trans World Airlines, Inc., No. 01-00056, 2001 WL 1820326, at *4 (Bankr. D. Del. 2001) (stating, while a "section 363(b) sale transaction does not require an auction procedure," "the auction procedure has developed over the years as an effective means for producing an arm's length fair value transaction.").

44. Thus, the Debtor submits that the Successful Bidder's Purchase Agreement (a "**Purchase Agreement**") will constitute the highest or otherwise best offer for the Assets and will provide a greater recovery for the Debtor's estate than would be provided by any other available alternative. As such, the Debtor's determination to sell the Assets through an Auction process and subsequently to enter into the Successful Bidder's Purchase Agreement will be a valid and sound exercise of the Debtor's business judgment. The Debtor will submit evidence at the Sale Hearing to support these conclusions. Therefore, the Debtor requests that the Court make a finding that the

proposed sale of the Assets is a proper exercise of the Debtor's business judgment and is rightly authorized.

b. Adequate and Reasonable Notice of the Sale Will Be Provided.

45. As described above, the Sale Notice: (a) will be served in a manner that provides at least 21 days' notice of the deadline for objecting to the Sale and the date, time, and location of the Sale Hearing; (b) informs parties in interest of the deadlines for objecting to the Sale or the assumption and assignment of the Contracts; and (c) otherwise includes all information relevant to parties interested in or affected by the Sale. Significantly, the form and manner of the Sale Notice will have been approved by this Court pursuant to the Bid Procedures Order after notice and a hearing before it is served on parties in interest.

c. The Sale and Purchase Price Reflects a Fair Value Transaction.

46. It is well-settled that, where there is a court-approved auction process, a full and fair price is presumed to have been obtained for the assets sold, as the best way to determine value is exposure to the market. See Bank of Am. Nat'l Trust & Sav. Ass'n. v. 203 N. LaSalle St. P'ship, 526 U.S. 434, 457 (1999); Trans World Airlines, 2001 WL 1820326, *4 (stating, while a "section 363(b) sale transaction does not require an auction procedure," "the auction procedure has developed over the years as an effective means for producing an arm's length fair value transaction.").

47. Moreover, as noted above, even as the Debtor moves forward with the Sale, the Debtor will continue to market the Assets and solicit other offers consistent with the Bid Procedures, including, for example, by contacting previously solicited parties, continuing to provide acceptable bidders with access to requested information, considering a variety of alternative transaction structures, and otherwise assisting the Debtor with all efforts to increase

transaction value. In this way, the number of bidders that are eligible to participate in a competitive Auction process will be maximized, or, if no Auction is held because no Auction is necessary, the Stalking Horse APA's purchase price will, conclusively, be fair value.

d. The Sale Has Been Proposed in Good Faith and Without Collusion, and the Stalking Horse Bidder or Successful Bidder Is a "Good-Faith Purchaser."

48. The Debtor requests that the Court find the Stalking Horse Bidder and/or other Successful Bidder arising from the Auction, if any, are entitled to the benefits and protections provided by section 363(m) of the Bankruptcy Code in connection with the sale of the Assets.

49. Section 363(m) of the Bankruptcy Code provides:

> [t]he reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease or property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

50. Section 363(m) of the Bankruptcy Code thus protects the purchaser of assets sold pursuant to section 363 of the Bankruptcy Code from the risk that it will lose its interest in the purchased assets if the order allowing the sale is reversed on appeal, as long as such purchaser leased or purchased the assets in "good faith." While the Bankruptcy Code does not define "good faith," courts have held that a purchaser shows its good faith through the integrity of its conduct during the course of the sale proceedings, finding that where there is a lack of such integrity, a good-faith finding may not be made. See In re Abbotts Dairies of Pa., Inc., 788 F.2d 143, 147 (3d Cir. 1986) ("Typically, the misconduct that would destroy a [buyer's] good faith status at a judicial sale involves fraud, collusion between the [proposed buyer] and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders."); In re Andy Frain Srvs., Inc., 798 F.2d 1113 (7th Cir. 1986) (same); In re Sasson Jeans, Inc., 90 B.R. 608, 610 (S.D.N.Y. 1988) (same);

In re Andy Frain Services, Inc., 798 F.2d 1113 (7th Cir. 1986); See In re Trism, 328 F.3d 1003, 1006 (8th Cir. 2003).

51. The Debtor submits that the Stalking Horse Bidder, or any other Successful Bidder arising from the Auction, is or will be "good faith purchasers" within the meaning of section 363(m) of the Bankruptcy Code, and the Stalking Horse APA, or any marked versions thereof, are or would be good-faith agreements on arms'-length terms entitled to the protections of section 363(m) of the Bankruptcy Code.[5] First, as set forth in more detail above, the consideration to be received by the Debtor pursuant to the Stalking Horse APA is substantial, fair, and reasonable. Second, the parties entered into the Stalking Horse APA in good faith and after extensive, arm's-length negotiations, during which all parties were represented by competent counsel, and any sale agreement with a Successful Bidder will be the culmination of a competitive Auction process in which all parties will presumably be represented by counsel and all negotiations will be conducted on an arm's-length, good-faith basis. Third, there is no indication of any "fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders" or similar conduct that would cause or permit the Sale or Stalking Horse APA to be avoided under section 363(n) of the Bankruptcy Code. And, with respect to potential bidders, the Bid Procedures are designed to ensure that no party is able to exert undue influence over the process. Finally, the Stalking Horse Bidder's offer was evaluated and approved by the Debtor in consultation with its advisors, and any other bids that the Debtor ultimately determines to be a

[5] The Debtor believes that a finding of good faith within the meaning of section 363(m) of the Bankruptcy Code will be appropriate for any Successful Bidder arising from the Auction. Pursuant to the Bid Procedures, any Successful Bidder will have had to present a proposal in accordance with the Bid Procedures. In addition, the Debtor will not choose, after consultation with the Consultation Parties, as the Successful Bidder or Back-Up Bidder (as defined in the Bid Procedures) any entity whose good faith under section 363(m) of the Bankruptcy Code can reasonably be doubted, and will be prepared to present the Court with sufficient evidence to allow the Court to find that the "good faith" standard of section 363(m) of the Bankruptcy Code has been satisfied.

Successful Bid will have been evaluated in a similar fashion. Accordingly, the Debtor believes that the Stalking Horse Bidder (or other Successful Bidder arising from the Auction, if any) and Stalking Horse APA (or marked version thereof) should be entitled to the full protections of section 363(m) of the Bankruptcy Code.

e. The Sale Should be Approved "Free and Clear" Under Section 363(f).

52. Section 363(f) of the Bankruptcy Code permits a debtor to sell property free and clear of another party's interest in the property if: (a) applicable nonbankruptcy law permits such a free and clear sale; (b) the holder of the interest consents; (c) the interest is a lien and the sale price of the property exceeds the value of all liens on the property; (d) the interest is the subject of a bona fide dispute; or (e) the holder of the interest could be compelled in a legal or equitable proceeding to accept a monetary satisfaction of its interest. See 11 U.S.C. § 363(f). Section 363(f) is supplemented by section 105(a) of the Bankruptcy Code, which provides that '[t]he Court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. §105(a).

53. Section 363(f) is drafted in the disjunctive. Thus, satisfaction of any of the requirements enumerated therein will suffice to warrant the Debtor's sale of the Assets free and clear of all interests (*i.e.*, all liens, claims, rights, interests, charges, or encumbrances), except with respect to any interests that may be assumed liabilities under the applicable Purchase Agreement. See In re Kellstrom Indus., Inc., 282 B.R. 787, 793 (Bankr. D. Del. 2002) ("[I]f any of the five conditions are met, the debtor has the authority to conduct the sale free and clear of all liens.").

54. The Debtor submits that one or more of the conditions set forth in section 363(f) of the Bankruptcy Code will be satisfied in respect of the Sale. Section 362(f)(2) will be satisfied because each of the parties holding lines on the Assets will consent, or absent any objection to the

Sale, will be deemed to have consented to the Sale. Any lien interest will also be adequately protected by either being paid in full at the time of closing, or by having it attach to the net proceeds of the Sale, subject to any claims and defenses the Debtor may possess. The Debtor accordingly requests authority to convey the Assets to the Stalking Horse Bidder or other Successful Bidder arising from the Auction, if any, free and clear of all liens, claims, rights, interests, charges, and encumbrances, with any such liens, claims, rights, interests, charges, and encumbrances to attach to the proceeds of the Sale.

f. Credit Bidding Should Be Authorized Under Section 363(k) of the Bankruptcy Code.

55. A secured creditor is allowed to "credit bid" the amount of its claim in a sale. Section 363(k) of the Bankruptcy Code provides, in relevant part, that unless the court for cause orders otherwise, the holder of a claim secured by property that is the subject of the sale "may bid at such sale, and, if the holder of such claim purchases such property, such holder may offset such claim against the purchase price of such property." 11 U.S.C. § 363(k). Even if a secured creditor is undersecured as determined in accordance with section 506(a) of the Bankruptcy Code, section 363(k) allows such secured creditor to bid the total face value of its claim and does not limit the credit bid to the claim's economic value. See In re Submicron Sys. Corp., 432 F.3d 448, 459-60 (3d Cir. 2006) (explaining that "[i]t is well settled among district court and bankruptcy courts that creditors can bid the full face value of its secured claims under section 363(k)").

56. Absent cause for restricting credit bidding, courts have consistently ruled in favor of reserving a secured creditor's right to credit bid its claim. See Source Home Entm't, LLC, No. 14-11553 (Bankr. D. Del. July 21, 2014) (order approving bid procedures which authorized parties with secured claims to credit bid); In re PTC Alliance Corp., No. 09-13395 (Bankr. D. Del. Nov. 6, 2009) (order authorizing, but not directing, the administrative DIP Lender to credit bid).

57. The Stalking Horse Bidder is a wholly owned subsidiary of the Renco Group, Inc. and formed for the purposes of undertaking the Sale pursuant to the Stalking Horse APA, which contemplates, with the consent of Wells Fargo, the Credit Bid. Accordingly, the Stalking Horse Bidder should be entitled to credit bid the full Credit Bid Amount for the Assets, including at the Auction as set forth in the Bid Procedures. The Debtor submits that Wells Fargo should likewise be afforded all rights under section 363(k) of the Bankruptcy Code to credit bid obligations owed to it under the Prepetition Credit Agreement or DIP Agreement.

V. The Assumption and Assignment of the Contracts Should Be Approved.

a. The Assumption and Assignment of the Contracts Reflects the Debtor's Reasonable Business Judgment.

58. To facilitate and effectuate the sale of the Assets, the Debtor is seeking authority to assign or transfer the Contracts to the Stalking Horse Bidder or other Successful Bidder arising from the Auction, if any, to the extent required by such bidders.

59. Section 365 of the Bankruptcy Code authorizes a debtor to assume and/or assign its executory contracts and unexpired leases, subject to the approval of the court, provided that the defaults under such contracts and leases are cured and adequate assurance of future performance is provided. The Debtor's decision to assume or reject an executory contract or unexpired lease must only satisfy the "business judgment rule" and will not be subject to review unless such decision is clearly an unreasonable exercise of such judgment. See Grp. of Institutional Invs. v. Chicago, Milwaukee, St. Paul & Pac. Ry. Co., 318 U.S. 523 (1943) (applying Bankr. Act section 77(b), predecessor to Bankruptcy Code section 365, and rejecting test of whether executory contract was burdensome in favor of whether rejection is within debtor's business judgment); Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp., 872 F.2d 36, 40 (3d Cir. 1989) (describing deference to a debtor's business judgment as "breathing space afforded [to] the debtor to consider

whether to reject or assume executory contracts under the Code."); In re Network Access Solutions, Corp., 330 B.R. 67, 75 (Bankr. D. Del. 2005) ("The standard for approving the assumption of an executory contract is the business judgment rule"); In re Exide Techs., 340 B.R. 222, 239 (Bankr. D. Del. 2006) ("The propriety of a decision to reject an executory contract is governed by the business judgment standard").

60. Here, the Court should approve the decision to assume and assign the Assumed Contracts in connection with the Sale as a sound exercise of the Debtor's business judgment. First, the Assumed Contracts are necessary to operate the Assets and, as such, they are essential to inducing the best offer for the Assets. Second, it is unlikely that any purchaser would want to acquire the Assets unless a significant number of the contracts and leases needed to manage the day-to-day operations were included in the transaction. Third, the Stalking Horse APA provides that the assumption and assignment of the Assumed Contracts is integral to, and inextricably integrated in, the Sale. Finally, the Assumed Contracts will be assumed and assigned through the process approved by the Court pursuant to the Bid Procedures Order and, thus, will be reviewed by key constituents in this Chapter 11 Case.

61. Accordingly, the Debtor submits that the assumption and assignment of the Assumed Contracts by way of the Assumption Procedures should be approved as an exercise of its business judgment.

b. Defaults Under the Assumed Contracts Will Be Cured Through the Sale.

62. Upon finding that a debtor has exercised its business judgment in determining that assuming an executory contract is in the best interest of its estate, courts must then evaluate whether the assumption meets the requirements of section 365(b) of the Bankruptcy Code, specifically that a debtor (a) cure, or provide adequate assurance of promptly curing, prepetition

defaults in the executory contract, (b) compensate parties for pecuniary losses arising therefrom, and (c) provide adequate assurance of future performance thereunder. This section "attempts to strike a balance between two sometimes competing interests, the right of the contracting non-debtor to get the performance it bargained for and the right of the debtor's creditors to get the benefit of the debtor's bargain." In re Luce Indus., Inc., 8 B.R. 100, 107 (Bankr. S.D.N.Y. 1980).

63. The Debtor submits that the statutory requirements of section 365(b)(1)(A) of the Bankruptcy Code will be promptly satisfied because the Stalking Horse APA requires that all defaults associated with, or that are required to properly assume, the Assumed Contracts be cured and paid by the the Stalking Horse Bidder as promptly as practicable after the Closing Date. See Stalking Horse APA § 2.5(b). Because the Bid Procedures Order (once approved) provides a clear process by which to resolve disputes over cure amounts or other defaults, the Debtor is confident that if defaults exist that must be cured, such cure will be achieved fairly, efficiently, and properly, consistent with the Bankruptcy Code and with due respect to the rights of non-debtor parties.

c. Non-Debtor Parties Will Be Adequately Assured of Future Performance.

64. Similarly, the Debtor submits that the third requirement of section 365(b) of the Bankruptcy Code—adequate assurance of future performance—is also satisfied given the facts and circumstances present here. "The phrase 'adequate assurance of future performance' adopted from section 2-609(1) of the Uniform Commercial Code, is to be given a practical, pragmatic construction based upon the facts and circumstances of each case." In re U.L. Radio Corp., 19 B.R. 537, 542 (Bankr. S.D.N.Y. 1982). Although no single solution will satisfy every case, "the required assurance will fall considerably short of an absolute guarantee of performance." In re Prime Motor Inns, Inc., 166 B.R. 993, 997 (Bankr. S.D. Fla. 1994). Among other things, adequate assurance may be given by demonstrating the assignee's financial health and experience in

managing the type of enterprise or property assigned. See In re Bygaph, Inc., 56 B.R. 596, 605−06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance present where a prospective assignee has financial resources and has expressed a willingness to devote sufficient funding to a business to give it a strong likelihood of succeeding).

65. The Debtor believes that it can and will demonstrate that the requirements for assumption and assignment of the Assumed Contracts to the Stalking Horse Bidder (or other Successful Bidder arising from the Auction, if any) will be satisfied. As required by the Bid Procedures, the Debtor will evaluate the financial wherewithal of potential bidders before designating such party a Qualified Bidder (*e.g.*, financial credibility, willingness, and ability of the interested party to perform under the Assumed Contracts) and will demonstrate such financial wherewithal, willingness, and ability to perform under the Assumed Contracts assigned to the Stalking Horse Bidder or any Successful Bidder arising from the Auction. Further, the Assumption Procedures provide the Court and other interested parties with ample opportunity to evaluate and, if necessary, challenge the ability of the Stalking Horse Bidder or any Successful Bidder arising from the Auction to provide adequate assurance of future performance and object to the assumption of the Assumed Contracts or proposed cure amounts. The Court therefore should have a sufficient basis to authorize the Debtor to reject or assume and assign the Assumed Contracts as set forth in the Stalking Horse APA.

VI. Relief Under Bankruptcy Rules 6004(h) and 6006(d) Is Appropriate.

66. Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale, or lease of property . . . is stayed until the expiration of fourteen days after the entry of the order, unless the court orders otherwise." Additionally, Bankruptcy Rule 6006(d) provides that an "order authorizing the trustee to assign an executory contract or unexpired lease . . . is stayed until the

expiration of fourteen days after the entry of the order, unless the court orders otherwise." The Debtor requests that the Sale Order be effective immediately upon its entry by providing that the fourteen-day stays under Bankruptcy Rules 6004(h) and 6006(d) are waived.

67. The purpose of Bankruptcy Rules 6004(h) and 6006(d) is to provide sufficient time for an objecting party to appeal before an order can be implemented. See Advisory Comm. Notes to Fed. R. Bankr. P. 6004(h) & 6006(d). Although Bankruptcy Rules 6004(h) and 6006(d) and the Advisory Committee Notes are silent as to when a court should "order otherwise" and eliminate or reduce the fourteen-day stay period, the leading treatise on bankruptcy suggests that the fourteen-day stay should be eliminated to allow a sale or other transaction to close immediately "where there has been no objection to procedure." 10 COLLIER ON BANKRUPTCY ¶ 6004.10 (15th rev. ed. 2006). Furthermore, if an objection is filed and overruled, and the objecting party informs the court of its intent to appeal, the stay may be reduced to the amount of time actually necessary to file such appeal. Id. The Debtor notes that similar requests to waive the stay imposed under Bankruptcy Rules 6004(h) are routinely granted. See, e.g., In re Bakers Footwear Grp. Inc., No. 12-49658 (CER) (Bankr. E.D. Mo. Nov. 1, 2012); In re ContinentalAFA Dispensing Co., No. 08-45921 (KAS) (Bankr. E.D. Mo. Nov. 12, 2008); In re the Great Atlantic & Pacific Tea Co., Inc., Case No. 15-23007 (SCC) (Bankr. S.D.N.Y. Aug. 11, 2015); In re Delia's, Inc., Case No. 14-23678 (RDD) (Bankr. S.D.N.Y. Feb. 10, 2015); In re Midway Games Inc., Case No. 09-10465 (KG) (Bankr. D. Del. June 3, 2009); In re Nortel Networks Inc., et al., Case No. 09-10138 (Bankr. D. Del. Mar. 3, 2009).

68. To maximize the value received for the Assets, the Debtor seeks to close the Sale as soon as possible after the Sale Hearing. In addition, the terms and conditions of the Debtor's post-petition financing require the closing of the Sale to occur within five (5) days of the entry of

the Sale Order. Accordingly, the Debtor hereby request that the Court waive the fourteen-day stay period under Bankruptcy Rules 6004(h) and 6006(d).

Notice

69. Notice of this Motion has been given to: (a) all parties who have expressed a written interest in some or all of the Assets; (b) all parties who are known or reasonably believed, after reasonable inquiry, to have asserted any lien, encumbrance, claim, or interest in the Assets; (c) the Office of the United States Trustee for the District of Delaware; (d) the Debtor's 20 largest unsecured creditors; and (e) the Internal Revenue Service. In light of the nature of the relief requested, the Debtor submits that no further notice is necessary.

No Prior Request

70. No prior request for the relief sought in this Motion has been made to this or any other Court in connection with these Chapter 11 Case.

WHEREFORE, the Debtor requests that the Court: (i) enter the Bid Procedures Order, substantially in the form attached as Exhibit A, (ii) at the conclusion of the Sale Hearing, enter the Sale Order, and (iii) grant such other relief as is necessary.

Dated: September 15, 2025

GELLERT SEITZ BUSENKELL &
BROWN, LLC

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EXHIBIT A

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

In re: US MAGNESIUM LLC, Debtor.[1]	Chapter 11 Case. No. 25-11696 (BLS) Related D. I. No. ____

ORDER (I) (A) APPROVING BID PROCEDURES IN CONNECTION WITH THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS, (B) APPROVING THE FORM AND MANNER OF NOTICE THEREOF (C) SCHEDULING AN AUCTION AND SALE HEARING, (D) APPROVING PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF CONTRACTS AND LEASES, AND (E) GRANTING RELATED RELIEF AND (II) AN ORDER (A) APPROVING THE STALKING HORSE APA BETWEEN THE DEBTOR AND THE STALKING HORSE BIDDER, (B) AUTHORIZING THE SALE TO THE STALKING HORSE BIDDER OR THE SUCCESSFUL BIDDER OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS, (C) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CONTRACTS AND LEASES, AND (D) GRANTING RELATED RELIEF

Upon the Debtor's Motion, Pursuant to sections 105, 363, 365 and 503 of the Bankruptcy Code and Fed. R. Bankr. P. 2002, 6004, 6006, 9006, 9007 and 9014 for Entry of (I) an Order (A) Approving Bid Procedures in Connection with the Sale of the Debtor's Assets, (B) Approving the Form and Manner of Notice Thereof, (C) Scheduling and Auction and Sale Hearing, (D) Approving Procedures for the Assumption and Assignment of Contracts and Leases, and (E) Granting Related Relief; and (II) an Order (A) Approving the Stalking Horse APA Between the Debtor and the Stalking Horse Bidder, (B) Authorizing the Sale to the Stalking Horse Bidder or the Successful Bidder of Substantially All of the Debtor's Assets Free and Clear of Liens, Claims,

[1] The last four digits of the Debtor's federal tax identification number are 5446. The Debtor's service address for the purpose of this chapter 11 case is: 238 N. 2200 W. Salt Lake City, UT 84116.

Encumbrances, and Interests, (C) Authorizing the Assumption and Assignment of Contracts and Leases, and (D) Granting Related Relief (the "Motion")[2] for entry of an order authorizing or approving, among other things, (a) the bid procedures (in the form attached hereto as Exhibit 1, the "Bid Procedures") in connection with the sale or disposition (the "Sale") of substantially all of the assets of the Debtor (as described further in the Motion, the "Assets"), (b) the notice of the Auction and Sale and hearing thereon (in the form attached hereto as Exhibit 2, the "Notice of Auction and Sale Hearing"), (c) the procedures (the "Assumption Procedures"), as set forth below, for the assumption and assignment of certain of the Debtor's executory contracts or unexpired leases (the "Contracts") and (d) the notice of the potential assumption and assignment of the Contracts (in the form attached hereto as Exhibit 3, the "Potential Assumption and Assignment Notice"); and the Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§1334(b) and 157; and the Court having found that venue of this case and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and the Court having found that it may enter a final order consistent with Article III of the United States Constitution; and the Court having found that notice of the Motion has been given as set forth in the Motion and that such notice is adequate and no other or further notice need be given except as set forth herein with respect to the Auction, the Sale Hearing and the potential assumption and assignment of the Contracts; and a reasonable opportunity to object to or be heard regarding the relief provided herein has been afforded to parties in interest pursuant to Bankruptcy Rule 6004(a); and the Court having considered the First Day Declaration; and upon the record of the hearing and all of the proceedings had before the Court; and the Court having found that the relief sought in the Motion is in the best

[2] Capitalized terms used but not otherwise defined herein are to be given the meanings ascribed to them in the Motion.

interests of the Debtor, its estate, its creditors and all other parties in interest; and the Court having found that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:[3]

The Bid Procedures attached hereto as Exhibit 1, are fair, reasonable and appropriate, and are designed to maximize the value to be achieved from the Sale.

The Assumption Procedures provided for herein are fair, reasonable and appropriate and consistent with the provisions of section 365 of the Bankruptcy Code.

The Debtor has articulated good and sufficient business reasons for the Court to approve (i) the Bid Procedures, including the scheduling of the Bid Deadline, Auction and Sale Hearing with respect to the proposed Sale; and (ii) the establishment of procedures to assume and assign the Contracts and fix the Cure Costs (as defined below) to be paid pursuant to section 365 of the Bankruptcy Code.

The Notice of Auction and Sale Hearing, and the Debtor's proposed publication of the Notice of Auction and Sale Hearing, is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Auction, the Sale, the Bid Procedures and the Assumption Procedures to be employed in connection therewith, including, without limitation: (i) the date, time and place of the Auction (if one is held); (ii) the Bid Procedures and the dates and deadlines related thereto; (iii) the objection deadline for the Sale and the date, time and place of the Sale Hearing; (iv) reasonably specific identification of the Assets; and (v) representations describing the Sale as being free and clear of liens, claims, interests and other encumbrances, with

[3] The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

all such liens, claims, interests and other encumbrances attaching with the same validity and priority to the proceeds of the Sale; and no other or further notice of the Sale shall be required.

The Potential Assumption and Assignment Notice is appropriate and reasonably calculated to provide each Contract Counterparty with proper notice of the Assumption Procedures. The inclusion of any Contract on a Potential Assumption and Assignment Notice does not constitute an admission that a particular Contract is an executory contract or unexpired lease of property or require or guarantee that such Contract will be assumed and assigned and all rights of the Debtor with respect thereto are reserved.

No further notice beyond that described in the foregoing paragraphs is required in connection with the Sale.

The entry of this order (the "Bid Procedures Order") is in the best interests of the Debtor, its estate, their creditors, and other parties-in-interest.

IT IS HEREBY ORDERED THAT:

The Motion is granted as set forth herein.

All objections to the Motion or the relief provided herein, as they pertain to the entry of this Bid Procedures Order, that have not been withdrawn, waived or settled, and all reservations of rights included therein, hereby are overruled and denied on the merits.

The Bid Procedures

The Bid Procedures are incorporated herein and approved, and shall apply with respect to the Sale. The Debtor is authorized to take all actions reasonable and necessary or appropriate to implement the Bid Procedures.

The Debtor is authorized to conduct the Bidding Process (as defined in the Bid Procedures) in accordance with the Bid Procedures and without the necessity of complying with any state or local bulk transfer laws or requirements applicable to the Debtor.

Potential Bidders (as defined in the Bid Procedures) or Qualified Bidders shall not be allowed any break-up, termination or similar fee with respect to the Assets. Moreover, all Potential Bidders and Qualified Bidders, waive any right to seek a claim for substantial contribution pursuant to section 503 of the Bankruptcy Code or the payment of any broker fees or costs.

Assumption Procedures

The following Assumption Procedures shall govern the assumption and assignment of the Contracts in connection with the Sale, and any objections related thereto:

On or before ______, 2025, the Debtor shall file with the Court and serve on each Contract Counterparty the Potential Assumption and Assignment Notice. In the event that the Debtor identifies any Contract Counterparty which were not served with the Potential Assumption and Assignment Notice, the Debtor may subsequently serve such Contract Counterparty with a Potential Assumption and Assignment Notice, and the following procedures will nevertheless apply to such Contract Counterparty; provided, however, that the deadlines to file objections to assumption and assignment or to the proposed cure amount with respect to such Contract Counterparty shall be, in the case of a Cure Objection, 12:00 p.m. on the date that is seven (7) days following service of the Potential Assumption and Assignment Notice and, in the case of any other objection to the proposed assumption, assignment and/or transfer of such Contract (including the transfer of any related rights or benefits thereunder0, other than objections that relate specifically to the identity of a Successful Bidder (an "Assignment Objection"), 12:00 p.m. on the date that is fourteen (14) days following service of the Potential Assumption and Assignment Notice.

The Potential Assumption and Assignment Notice served on each Contract Counterparty shall (i) identify each Contract; (ii) list the proposed calculation of the cure amount that the Debtor believes must be paid to cure all defaults outstanding under the Contract as of such date (the "Cure Costs"); (iii) include a statement that assumption and assignment of such Contract is not required or guaranteed; and (iv) inform such Contract Counterparty of the requirement to file any Cure Objection or Assignment Objection by their respective deadlines. Service of a Potential Assumption and Assignment Notice does not constitute an admission that a particular Contract is an executory contract or unexpired lease of property, or confirm that the Debtor is required to assume and/or assign such Contract.

Cure Objections and/or Assignment Objections must (x) be in writing; (y) state with specificity the nature of such objection, including, if applicable, the amount of Cure Costs in dispute and (z) be filed with the Court and properly served on the Notice Parties (as defined below) so as to be received, in the case of a Cure Objection, no later than 4:00 p.m. on the date that is seven (7) calendar days from service of the Potential Assumption and Assignment Notice (the "Cure Objection Deadline") and, in the case of an Assignment Objection, no later than October 24, 2025 at 4:00 p.m. (EST) (the "Assignment Objection Deadline"), subject to the proviso in subparagraph (a) above .

Objections (a "Post-Auction Objection") of any Contract Counterparty related solely to the identity of and adequate assurance of future performance provided by any Successful Bidder other than the Stalking Horse Bidder must (x) be in writing; (y) state with specificity the nature of such objection, and (z) be filed with the Court and properly served on the Notice Parties so as to be received no later than 10:00 a.m. (EST) on [November 4, 2025] (the "Post-Auction Objection Deadline"), subject to the proviso in subparagraph (a) above.

Any Contract Counterparty to a Contract who fails to timely file and properly serve a Cure Objection, Assignment Objection or Post-Auction Objection as provided herein will (i) be forever barred from objecting to the Cure Costs and from asserting any additional cure or other amounts with respect to such Contract in the event it is assumed and/or assigned by the Debtor and the Debtor shall be entitled to rely solely upon the Cure Costs, and (ii) be deemed to have consented to the assumption, assignment and/or transfer of such Contract (including the transfer of any related rights and benefits thereunder) to the relevant Successful Bidder and shall be forever barred and estopped from asserting or claiming against the Debtor or the Successful Bidder that any additional amounts are due or defaults exist, or conditions to assumption, assignment, and/or transfer must be satisfied under such Contract, or that any related right or benefit under such Contract cannot or will not be available to the relevant Successful Bidder. If a Cure Objection or Assignment Objection is timely filed and properly served, the Resolution Procedures (as defined below) will apply.

If a Contract Counterparty files a Cure Objection or Assignment Objection satisfying the requirements of these Assumption Procedures, the Debtor and the Contract Counterparty shall meet and confer in good faith to attempt to resolve any such objection without Court intervention (the "Resolution Procedures"). If the applicable parties determine that the objection cannot be resolved without judicial intervention in a timely manner, the Court shall make all necessary determinations relating to such Cure Objection or Assignment Objection at a hearing scheduled pursuant to the following paragraph.

Consideration of unresolved Cure Objections, Assignment Objections and Post-Auction Objections relating to all Contracts, if any, will be held at the Sale Hearing, provided, however, that (i) any Contract that is the subject solely of a Cure Objection and not an Assignment may be assumed and assigned prior to resolution of such objection and (ii) the Debtor, in consultation with the Consultation Parties, may adjourn a Cure Objection in its discretion.

A timely filed and properly served Cure Objection or Assignment Objection or Post-Auction Objection will reserve the filing Contract Counterparty's rights relating to the Contract, but will not be deemed to constitute an objection to the relief generally requested in the Motion with respect to the approval of the Sale.

The Debtor's assumption and/or assignment of a Contract is subject to approval by the Court, consummation of the Sale and receipt of a Confirmation Notice (as defined below). Absent consummation of the Sale, receipt of a Confirmation Notice and entry of a Sale Order approving the assumption and/or assignment of the Contracts, the Contracts shall be deemed neither assumed nor assigned, and shall in all respects be subject to subsequent assumption or rejection by the Debtor.

Within ten (10) days following the assumption and assignment of any Contract to the Successful Bidder, the Debtor shall file with the Court and shall serve each Contract Counterparty whose Contract the Debtor assumed and/or assigned with a notice of assumption and assignment of such Contract (the "Confirmation Notice"). Any Contract where no Confirmation Notice was served shall be deemed neither assumed nor assigned, and shall in all respects be subject to subsequent assumption or rejection by the Debtor.

The Debtor's decision to assume and assign the Contracts to the Successful Bidder is subject to the Court's approval and the closing of the Sale. Accordingly, absent the Court's approval and the closing of the Sale, the Contracts shall not be deemed assumed or assumed and assigned, and shall in all respects be subject to further administration by the Debtor and its estate under the Bankruptcy Code in connection with the Chapter 11 Case.

Notice Procedures

Service and publication of the Notice of Auction and Sale Hearing are sufficient to provide effective notice to all interested parties of, *inter cilia*, the Bid Procedures, the Auction, the Sale Hearing, the Sale and the Assumption Procedures in accordance with Bankruptcy Rules 2002 and 6004, as applicable, and are approved.

On or before the date that is three (3) days after entry of this Bid Procedures Order, the Debtor will cause the Notice of Auction and Sale Hearing to be sent by first-class mail postage prepaid, to the following: (a) Office of the United States Trustee; (b) holders of the 20 largest unsecured claims against the Debtor; (c) counsel to the official committee of unsecured creditors, if one has been appointed; (d) counsel to the DIP Lender; (e) all parties known or reasonably believed to have asserted an interest in any of the Assets; (f) the Contract Counterparties; (g) the Attorneys General in the State(s) where the Assets are located; (h) all state and local taxing authorities in the State(s) where the Assets are located; (i) the Internal Revenue Service; (j) all parties that have asserted liens against the Assets; and (k) all parties that have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002.

In addition to the foregoing, on or before five (5) business days after entry of the Bid Procedures Order, the Debtor shall, subject to applicable submission deadlines, publish the Notice of Auction and Sale Hearing once in the national edition of the Wall Street Journal, and post the Notice of Auction and Sale Hearing and the Bid Procedures Order on the website of the Debtor's claims and noticing agent, if any.

Within 24 hours following conclusion of the Auction, the Debtor shall file a notice on the Court's docket identifying the Successful Bidder(s) for the Assets and any applicable Next-Highest Bidder(s).

The Potential Assumption and Assignment Notice, and the other Assumption Procedures set forth herein, are sufficient to provide effective notice pursuant to Bankruptcy Rules 2002(a)(2), 6004(a) and 6006(c) to the Contract Counterparties of the Debtor's intent to potentially assume and assign some or all of the Contracts and are approved.

Auction and Sale Hearing

Bid Deadline. As further described in the Bid Procedures Motion, the deadline for submitting bid for the Assets (the "Bid Deadline") is October 24, 2025 at 12:00 p.m (EST). No bid shall be deemed to be a Qualified Bid unless such bid meets the requirements set forth in the Bid Procedures.

Auction. If at least two Qualified Bids including the Stalking Horse Bid) are received by the Bid Deadline with regard to the Assets, the Debtor will conduct an Auction in accordance with the Bid Procedures, which Auction shall take place on October 31, 2025 at 10:00 a.m. (EST) at the offices of proposed counsel to the Debtor, Gellert Seitz Busenkell & Brown, LLC, 1201 North Orange Street, 3rd Floor, Wilmington, Delaware 19801, or such later time or such other place as the Debtor shall designate and notify to all Qualified Bidders (as defined in the Bid Procedures) who have submitted Qualified Bids. If the Debtor does not receive a Qualified Bid other than the Stalking Horse Bid, (a) the Debtor shall not hold an Auction; (b) the Stalking Horse Bid will be the Successful Bid; and (c) the Stalking Horse Bidder will be named the Successful Bidder.

Each Qualified Bidder participating in the Auction will be required to confirm, in writing, that (a) it has not engaged in any collusion with respect to the Bidding Process or on the record at the Auction, (b) its Qualified Bid is a good faith bona fide offer that it intends to consummate if selected as the Successful Bidder, and (c) the Qualified Bidder agrees to serve as a backup bidder if its Qualified Bid is the next highest and best bid after the Successful Bid with respect to the relevant Assets.

Sale Hearing. The Sale Hearing shall be held before the Court on November 7, 2025 at T.B.D. (EST) before the Honorable Judge Brendan L. Shannon, United States Bankruptcy Judge for the Bankruptcy Court for the District of Delaware. The Debtor shall file a form of Sale Order before the Sale Hearing. At the Sale Hearing, the Debtor will seek the entry of the Sale Order approving and authorizing the Sale to the Successful Bidder(s). The Sale Hearing (or any portion thereof) may be adjourned by the Court or the Debtor from time to time without further notice other than by announcement in open court, on the Court's calendar or through the filing of a notice or other document on the Court's docket.

Sale Objection Deadline. The deadline to object to the relief requested in the Motion, including entry of the proposed Sale Order (a "Sale Objection") is October 24, 2025 at 4:00 p.m. (EST) (the "Sale Objection Deadline"). A Sale Objection must be filed with the Court and served in the manner set forth below so actually received no later than the Sale Objection Deadline.

Post-Auction Objection Deadline. Objections to (i) the conduct at the Auction (if held) or (ii) solely with respect to the Contract Counterparties to the Contracts, to the specific identity of and adequate assurance of future performance provided by the Successful Bidder with respect to the applicable Contract (a "Post-Auction Objection") must be filed with the Court and served in the manner set forth below so *actually received* no later than the Post-Auction Objection Deadline.

Objection Procedures

Any party that seeks to object to the relief requested in the Motion pertaining to approval of the Sale shall file a formal written objection that complies with the objection procedures as set forth herein and in the Motion, as applicable.

Objections, if any, must be: (i) be in writing; (ii) signed by counsel or attested to by the objecting party; (iii) in conformity with the applicable provisions of the Bankruptcy Rules and the Local Rules; (iv) state with particularity the legal and factual basis for the objection and the specific grounds therefor; (v) be filed with the Clerk of the Court, together with proof of service and (vi) be served, so as to be actually received on or before the applicable Objection Deadline, upon (a) proposed counsel to the Debtor, Gellert Seitz Busenkell & Brown, LLC, 1201 North Orange Street, 3rd Floor, Wilmington, Delaware 19801, (b) counsel to the official committee of unsecured creditors, if one is appointed; (c) the Office of the United States Trustee for the District of Delaware; (d) counsel to Wells Fargo Bank, National Association, Otterbourg, P.C., 230 Park

Avenue, New York, New York 10169-0075 (Attn: Jonathan N. Helfat, Esq., Fax: (212) 682-6104) (collectively, the "Notice Parties").

Failure to file a Sale Objection on or before the Sale Objection Deadline (a) shall forever bar the assertion, whether at any Sale Hearing or thereafter, of any objection to the Motion, to entry of the Sale Order, and/or to the consummation and performance of the Sale with a Successful Bidder, and (b) shall be deemed for all purposes to be "consent" to entry of the Sale Order and consummation of the Sale and all transactions related thereto.

Other Relief Granted

This Bid Procedures Order shall be binding in all respects upon any trustees, examiners, "responsible persons" or other fiduciaries appointed in the Debtor's bankruptcy cases or upon a conversion to chapter 7 under the Bankruptcy Code.

Nothing herein shall be deemed to or constitute the assumption, assignment or rejection of any Contract.

Notwithstanding any provision in the Bankruptcy Rules to the contrary, the stays provided for in Bankruptcy Rules 6004(h) and 6006(d) are waived and this Bid Procedures Order shall be effective immediately and enforceable upon its entry.

In the event of any conflict between this Order and the Bid Procedures, this Order shall govern in all respects.

The requirements set forth in Local Rules 6004-1, 9006-1, and 9013-1 are hereby satisfied or waived.

This Court shall retain exclusive jurisdiction over any matters related to or arising from the implementation of this Order.

EXHIBIT 1
Bid Procedures

(see attached)

BID PROCEDURES

Set forth below are the bid procedures (the "Bid Procedures") to be used with respect to the sale or disposition (the "Sale") of the Assets (as defined below) of US Magnesium LLC (the "Debtor"). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion or Bid Procedures Order, as applicable.

Additional information regarding the Assets can be obtained by contacting the Debtor's counsel Gellert Seitz Busenkell & Brown, LLC, 1201 North Orange Street, 3rd Floor, Wilmington, Delaware 19801; Attention: Mike Busenkell, DD: (302-425-5812), MBusenkell@gsbblaw.com.

Description of the Assets to be Sold

The Debtor is seeking to sell all or substantially all of its business as a going concern, including, but not limited to, the inventory, receivables, equipment, intellectual property, unexpired leases, contract rights and other assets related to or necessary to operate the business currently operated by the Debtor, but excluding cash and causes of action arising under chapter 5 of the Bankruptcy Code (as defined below) (the "Assets").

The Sale of the Assets shall be subject to a competitive bidding process as set forth herein and approval by the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") pursuant to sections 105, 363, and 365 of title 11 of the United States Code (the "Bankruptcy Code") and Rules 2002, 6003, 6004, 6006, 9007, 9008 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"). The Debtor may consider bids for the Assets in a single bid from a single bidder, or in multiple bids from multiple bidders. The aggregate consideration offered must satisfy the requirements set forth in these Bid Proceduresand in the Bid Procedures Order.

Timeline

Date	Event
[__________], 2025 at 5:00 p.m. (EST)	Dissemination of Bid Packages
[__________], 2025	Service of Potential Assumption and Assignment Notice
Seven (7) days from service of the Contract Notice	Cure Objection Deadline
October 24, 2025 at 12:00 p.m. (EST)	Bid Deadline
October 31, 2025 at 10:00 a.m. (EST)	Auction
[October 24, 2025] at 4:00 p.m. (EST)	Sale Objection Deadline Assignment Objection Deadline

November 4, 2025 at 4:00 p.m. (EST)	Post-Auction Objection Deadline
November 7, 2025 at T.B.D. (EST)	Sale Hearing

Confidentiality Agreement

Unless otherwise ordered by the Bankruptcy Court for cause shown, to participate in the Bidding Process (as defined below), each person or entity other than the Stalking Horse Bidder must enter into (unless previously entered into) with the Debtor, on or before the Bid Deadline, an executed confidentiality agreement in form and substance reasonably satisfactory to the Debtor (the "Confidentiality Agreement"). Each person or entity that enters into the Confidentiality Agreement with the Debtor on or before the Bid Deadline is hereinafter referred to as a "Potential Bidder." The Debtor, in consultation with the Consultation Parties, expressly reserves the right to reject any "joint bids" by multiple Potential Bidders or bids submitted by joint ventures formed by more than one Potential Bidder.

After a Potential Bidder enters into the Confidentiality Agreement with the Debtor, the Debtor shall deliver or make available (unless previously delivered or made available) to each Potential Bidder certain designated information (including, if applicable, financial data) with respect to the Assets.

Determination by the Debtor

As appropriate throughout the Bidding Process, the Debtor will consult with the Consultation Parties and shall (a) coordinate the efforts of Potential Bidders in conducting their respective due diligence, (b) evaluate bids from Potential Bidders for the Assets, (c) negotiate any bid made to acquire the Assets, and (d) make such other determinations as are provided in these Bid Procedures (collectively, the "Bidding Process"). Neither the Debtor nor its representatives shall be obligated to furnish any information of any kind whatsoever relating to the Assets to any party that is not a Potential Bidder or a Consultation Party.

Due Diligence

Up to and including the Bid Deadline (such period, the "Diligence Period"), the Debtor shall afford any Potential Bidder, and any Consultation Party, such available due diligence access or additional information as may be reasonably requested by the Potential Bidder or Consultation Party, as applicable, that the Debtor, in its business judgment, and in consultation with the DIP Lender, determine to be reasonable and appropriate under the circumstances. The Debtor will grant each Potential Bidder or Consultation Party, as applicable, access to such data room. The Debtor may designate a representative or representatives to coordinate all reasonable requests for additional information and due diligence access from such Potential Bidders and/or Consultation Parties, as applicable. Each Potential Bidder shall be required to acknowledge that it has had an opportunity to conduct any and all due diligence regarding the Assets in conjunction with submitting its Bid (as defined below). Notwithstanding the foregoing, the Debtor reserves the right, in its reasonable discretion and following consultation with the Consultation Parties, to withhold or limit access to any information that the Debtor determines to be commercially sensitive or otherwise not appropriate to disclose to any Potential Bidder.

Bid Deadline

A Potential Bidder that desires to make a Bid shall deliver copies of its Bid by email to: (a) proposed counsel to the Debtor, (b) counsel to the official or unofficial creditors' committee, if one has been appointed; and (c) counsel to the DIP Lender, Otterbourg P.C., 230 Park Avenue, New York, NY 10169 Attn: Jonathan N. Helfat, Esq, jhelfat@otterbourg.com; by no later than the Bid Deadline. The Debtor, in turn, shall provide copies of all Bid materials to each Consultation Party so long as such party has not submitted a Bid, as set forth below.

Bid Requirements

All bids, other than the Stalking Horse Bid, which is deemed a qualified Bid for all purposes, for a bid (each hereinafter, a "Bid") to be deemed a qualified Bid, the Bid must be accompanied by (collectively, the "Bid Requirements"):

a redline of the Stalking Horse APA marked to reflect any proposed amendments and modifications to the Stalking Horse APA;

a statement providing that the Potential Bidder's offer is binding and irrevocable until the later of (i) the Closing Date (as defined herein), or (ii) twenty (20) days after the Sale Hearing (unless selected as the Next-Highest Bidder (as defined below) in which case such offer will remain open until the Closing Date);

a statement providing for a Closing Date that occurs on or before the date that is sixty-five (65) days following the Petition Date;

a statement providing that such Bid is not subject to any due diligence or financing contingency;

a statement providing that the Potential Bidder agrees to serve as a backup bidder (the "Next-Highest Bidder") if the Potential Bidder's Qualified Bid (as defined below) is the next highest and best bid after the Successful Bid (as defined below) (the "Next-Highest Bid") with respect to the relevant Assets;

providing adequate assurance of future performance information (the "Adequate Assurance Information"), including (i) information about the Potential Bidder's financial condition, such as federal tax returns for two years, a current financial statement, or bank account statements, (ii) information demonstrating (in the Debtor's reasonable business judgment) that the Potential Bidder has the financial capacity to consummate the proposed Sale, (iii) evidence that the Potential Bidder has obtained authorization or approval from its board of directors (or comparable governing body) with respect to the submission of its Bid, (iv) the identity and exact name of the Potential Bidder (including any equity holder or other financial backer if the Potential Bidder is an entity formed for the purpose of consummating the proposed Sale), and (v) such additional information regarding the Potential Bidder as the Potential Bidder may elect to include. By submitting a Bid, Potential Bidders agree that the Debtor may disseminate their Adequate Assurance Information to affected landlords, contract counterparties, and the Consultation Parties in the event that the Debtor determine such bid to be a Qualified Bid (as defined below);

(a) a deposit in the form of a certified check or wire transfer, payable to the order of the Debtor, in the amount of ten percent (10%) of cash consideration portion of the Bid, which funds will be deposited into an interest bearing escrow account to be identified and established by the Debtor (a "Good Faith Deposit") and (b) written evidence, documented to the Debtor's satisfaction, that demonstrates the Potential Bidder has available cash, a commitment for financing if selected as the Successful Bidder (as defined below) with respect to the relevant Assets (provided, however, that the closing shall not be contingent in any way on the Successful Bidder's financing) and such other evidence of ability to consummate the transaction(s) as the Debtor may request, including proof that such funding commitments or other financing are not subject to any internal approvals, syndication requirements, diligence or credit committee approvals (provided that such commitments may have covenants and conditions acceptable to the Debtor). The Debtor reserves the right to increase or decrease the Good Faith Deposit for one or more Qualified Bidders (as defined below) in their sole discretion after consulting with the Consultation Parties.

The Debtor, in consultation with the Consultation Parties, will review each Bid received from a Potential Bidder to determine whether it meets the requirements set forth above. A Bid received from a Potential Bidder that meets the above requirements, and is otherwise satisfactory to the Debtor, will be considered a "Qualified Bid" and each Potential Bidder that submits a Qualified Bid will be considered a "Qualified Bidder"; provided, that, no Bid will be deemed to be a Qualified Bid unless such Bid provides value to the Debtor's estate, in cash, in an amount which exceeds the value of the Bid of the Stalking Horse Bidder by no less than $_______. The Debtor shall inform the Qualified Bidders that their Bids have been designated as Qualified Bids no later than 48 hours after such Bids are received.

For the avoidance of doubt, the Stalking Horse Bidder or any entity affiliated with the Stalking Horse Bidder will be deemed to be a Qualified Bidder, for all purposes and requirements pursuant to the Bid Procedures, notwithstanding the requirements that a Potential Bidder must satisfy to be a Qualified Bidder, including the requirements, among others, to deliver a confidentiality agreement and post a Good Faith Deposit.

A Qualified Bid will be valued by the Debtor based upon any and all factors that the Debtor, in consultation with the Consultation Parties, reasonably deem pertinent in their reasonable business judgment, including, among others, (a) the amount of the Qualified Bid, (b) the risks and timing associated with consummating the transaction(s) with the Qualified Bidder, (c) any excluded assets or executory contracts and leases, and (d) any other factors that the Debtor (in consultation with the Consultation Parties) may reasonably deem relevant.

The Debtor, in its business judgment, and in consultation with the Consultation Parties, reserves the right to reject any Bid if such Bid, among other things:

- requires any indemnification of the Potential Bidder in its Purchase Agreement;
- is not received by the Bid Deadline;
- is subject to any contingencies (including representations, warranties, covenants and timing requirements) of any kind or any other conditions precedent to such party's obligation to acquire the relevant Assets;
- seeks any bid protections; or
- does not, in the Debtor's determination (after consultation with the Consultation Parties), include a fair and adequate price or the acceptance of which would not be in the best interests of the Debtor's estate or the Auction.

Any Bid rejected pursuant to this paragraph shall not be deemed to be a Qualified Bid. In the event that any Bid is so rejected, the Debtor shall cause the Good Faith Deposit of such Potential Bidder (including all accumulated interest thereon) to be refunded to it within five (5) business days after the Bid Deadline.

If the Debtor does not receive one or more Qualified Bids prior to the Bid Deadline with respect to the Assets other than the Stalking Horse Bid, the Debtor shall cancel the Auction and proceed to the Sale Hearing to seek approval of the Sale to the Stalking Horse Bidder pursuant to the Stalking Horse APA.

Credit Bidding

In connection with the Sale of all the Assets, to the Stalking Horse Bidder will credit bid the Credit Bid Amount as defined in the Stalking Horse APA for its collateral pursuant to section 363(k) of the Bankruptcy Code(the "Credit Bid"). Wells Fargo Bank, National Association, shall also be entitled to credit bid some or all of its secured claims for its collateral. Credit Bids may be applied only to reduce the cash consideration with respect to those assets in which the party submitting such credit bid holds a security interest.

Auction

Unless otherwise ordered by the Bankruptcy Court for cause shown, only the Qualified Bidders are eligible to participate at the Auction (as defined below). The Consultation Parties shall be permitted to attend the Auction. At least three (3) days prior to the Auction, each Qualified Bidder must inform the Debtor in writing whether it intends to participate in the Auction. If the Debtor receives only one Qualified Bid with regard to the Assets, (a) the Debtor shall not hold an Auction with respect to such Assets; (b) the Qualified Bid will be deemed the Successful Bid with respect to the Assets; and (c) the Qualified Bidder will be named the Successful Bidder with respect to such Assets.

If at least two Qualified Bids are received by the Bid Deadline with regard to the Assets, the Debtor will conduct an auction (the "Auction") with respect to such Assets and shall determine, after consultation with the Consultation Parties, which Qualified Bid is the highest or otherwise best Qualified Bid for the Assets (the "Starting Bid"), which determination will be communicated to Qualified Bidders prior to the commencement of the Auction. The Auction shall take place at 10:00 a.m. on October 31, 2025 at the offices of counsel to the Debtor, Gellert Seitz Busenkell & Brown, LLC, 1201 North Orange Street, 3rd Floor, Wilmington, Delaware 19801, or such later time or such other place as the Debtor shall designate and notify to all Qualified Bidders who have submitted Qualified Bids. Professionals and principals for the Debtor, each Qualified Bidder and the Consultation Parties shall be able to attend and observe the Auction, along with any other parties the Debtor deem appropriate.

Each Qualified Bidder participating in the Auction will be required to confirm, in writing, and on the record at the Auction, that (a) it has not engaged in any collusion with respect to the Bidding Process, and (b) its Qualified Bid is a good faith bona fide offer that it intends to consummate if selected as the Successful Bidder.

Bidding at the Auction for the Assets (or subset thereof) that are subject to Qualified Bids will begin with the Starting Bid and continue, in one or more rounds of bidding, so long as during each round at least one Subsequent Bid (defined below) is submitted by a Qualified Bidder that (i) improves on such Qualified Bidder's immediately prior Qualified Bid (a "Subsequent Bid") and (ii) the Debtor reasonably determine, in consultation with the Consultation Parties, that such Subsequent Bid is (A) for the first round, a higher or otherwise better offer than the Starting Bid, and (B) for subsequent rounds, a higher or otherwise better offer than the Leading Bid (as defined below). Each Subsequent Bid at the Auction shall provide net value to the estates in an amount to be announced at or prior the Auction ("Incremental Overbid") over the Starting Bid or the Leading Bid (as defined below), as the case may be, as determined by the Debtor in the exercise of their reasonable business judgment and in consultation with the Consultation Parties. After the first round of bidding and between each subsequent round of bidding, the Debtor shall announce the bid that they believe to be the highest or otherwise best offer for the subject Assets (the "Leading Bid"). A round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid, subject to the Debtor's authority to revise the Auction procedures as set forth below.

The Debtor may, in consultation with the Consultation Parties, announce at the Auction additional procedural rules (*e.g.*, the amount of time to make Subsequent Bids, the amount of the Incremental Overbid, or the requirement that parties submit "best and final" Bids) for conducting the Auction or otherwise modify these Bid Procedures; provided that such rules (1) are not materially inconsistent with these Bid Procedures, the Bankruptcy Code or any order of the Bankruptcy Court, and (2) are disclosed to each Qualified Bidder during the Auction. The bidding at the Auction shall be transcribed or videotaped and the Debtor shall maintain a transcript of all Bids made and announced at the Auction

Immediately prior to the conclusion of the Auction, the Debtor, in consultation with the Consultation Parties will, for the Assets (or subset thereof) that were subject to the Auction: (a) determine, consistent with the Bid Procedures, which bid constitutes the highest or otherwise best bid (the "Successful Bid"); and (b) notify all Qualified Bidders at the Auction for the subject

Assets, prior to its conclusion, of the name of the maker of the Successful Bid (the "Successful Bidder") with respect to the subject Assets, and the amount and other material terms of the Successful Bid. The Debtor may, in consultation with the Consultation Parties, designate the Next-Highest Bid (and the corresponding Next-Highest Bidder) to close with respect to the subject Assets in the event that the Successful Bidder does not close the Sale. The terms of each Successful Bid and Next-Highest Bid shall be reasonably acceptable to Wells Fargo Bank, National Association. Unless the Bankruptcy Court orders otherwise upon application by the Debtor, the Debtor shall not consider any Bids or Subsequent Bids submitted after the conclusion of the Auction and any and all such Bids and Subsequent Bids shall be deemed untimely and shall under no circumstances constitute a Qualified Bid.

Within 24 hours following conclusion of the Auction, the Debtor shall file a notice on the Bankruptcy Court's docket identifying (with specificity) the Successful Bidder(s) for the Assets (or subset thereof) and any applicable Next-Highest Bidders. Notwithstanding the selections of the Successful Bidder(s) and the Next-Highest Bidder(s), all Bids are binding and irrevocable until the later of (i) the Closing Date, or (ii) twenty (20) days after the Sale Hearing (unless selected as the Next-Highest Bidder, in which case such offer will remain open until the Closing Date).

Jurisdictional Consent

All bidders at the Auction will be deemed to have consented to the core jurisdiction of the Bankruptcy Court and waived any right to jury trial in connection with any disputes relating to the Auction, the Sale and the construction and enforcement of the Stalking Horse APA and all other agreements entered into in connection with the Sale transaction. Such consent and waiver shall apply to the extent that it is later determined that the Bankruptcy Court, absent consent, cannot enter final orders or judgments with regard to the foregoing matters consistent with Article III of the United States Constitution.

Acceptance of Qualified Bids

The Debtor may reject at any time, before entry of an order of the Bankruptcy Court approving the Sale, any Bid that, in the Debtor's judgment, upon considering any comments of the Consultation Parties, is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bid Procedures or the DIP Documents, or (iii) contrary to the best interests of the Debtor and its estate. The Debtor, in consultation with the Consultation Parties, expressly reserve the right to reject any "joint bids" by multiple Potential Bidders or bids submitted by joint ventures formed by more than one Potential Bidder.

The Debtor's presentation to the Bankruptcy Court for approval of a selected Qualified Bid as a Successful Bid does not constitute the Debtor's acceptance of such Bid. The Debtor will have accepted a Successful Bid only when such Successful Bid has been approved by the Bankruptcy Court at the Sale Hearing. The Debtor intends to close the Sale(s) on or before [November 12, 2025] unless another time or date, or both, are agreed to in writing by the Debtor and the Successful Bidder (the "Closing Date").

No Fees for Potential Bidders or Qualified Bidders

Potential Bidders or Qualified Bidders shall not be allowed any break-up, termination or similar fee. Moreover, all Potential Bidders, Qualified Bidders, by participating in the Bidding Process, will be deemed to have waived any right to seek a claim for substantial contribution pursuant to section 503 of the Bankruptcy Code or the payment of any broker fees or cost.

Sale Hearing

The Stalking Horse Bid or Successful Bid, as applicable, will be subject to approval by the Bankruptcy Court. The hearing to approve the Stalking Horse Bid or the Qualified Bid, as applicable, shall take place on **November 7, 2025 at T.B.D. (EST)** (the "Sale Hearing"). The Sale Hearing may be adjourned by the Debtor consistent with the terms of the DIP Documents and from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing or by filing a notice, which may be a hearing agenda stating the adjournment, on the docket of the Debtor's chapter 11 case.

At the Sale Hearing, the Debtor will seek entry of an order that, among other things: (i) authorizes and approves the Sale to the Successful Bidder and/or the Next-Highest Bidder(s) free and clear of all liens, claims, interests and encumbrances, (ii) includes a finding that the Successful Bidder(s) and/or the Next-Highest Bidder(s) is a good faith purchaser pursuant to section 363(m) of the Bankruptcy Code, and (iii) as appropriate, exempts the Sale(s) and conveyance(s) of the Assets from any transfer tax, stamp tax or similar tax, or deposit under any applicable bulk sales statute.

Return of Good Faith Deposit

The Good Faith Deposits of all Potential Bidders shall be held in escrow by the Debtor, but shall not become property of the Debtor's estate absent further order of the Bankruptcy Court. The Good Faith Deposits of all Potential Bidders shall be retained by the Debtor, notwithstanding Bankruptcy Court approval of the Sale(s), until three (3) business days after the earlier of (a) the Closing Date, or (b) ten (10) days following the Sale Hearing; provided, however, that the Good Faith Deposit of each Next-Highest Bidder shall be retained until three (3) business days after the Closing Date. The Debtor shall retain any Good Faith Deposit submitted by the Successful Bidder. At the closing of a Sale contemplated by a Successful Bid, the Successful Bidder will be entitled to a credit for the amount of its Good Faith Deposit to the extent such a deposit was provided.

If a Successful Bidder (or, if the Sale is to be closed with a Next-Highest Bidder, then the Next-Highest Bidder) fails to consummate the Sale because of a breach or failure to perform on the part of such bidder, then, subject to the terms of the Purchase Agreement or the Stalking Horse APA, as applicable (and as such agreements may be amended or modified at the Auction), the Debtor and its estate shall be entitled to retain the Good Faith Deposit of such Successful Bidder (or, if the Sale is to be closed with the Next-Highest Bidder, then such Next-Highest Bidder) as part of the damages resulting to the Debtor and its estate for such breach or failure to perform.

Reservation of Rights and Modifications

Notwithstanding any of the foregoing, the Debtor and its estate, in consultation with the Consultation Parties, and consistent with the terms of the DIP Documents, reserve the right to modify these Bid Procedures at or prior to the Auction, including, without limitation, to extend the deadlines set forth herein, modify bidding increments, waive terms and conditions set forth herein with respect to any or all Potential Bidders (including, without limitation, the Bid Requirements), impose additional terms and conditions with respect to any or all potential bidders, adjourn or cancel the Auction at or prior to the Auction, and adjourn the Sale Hearing. By no later than the date of the Auction, the Debtor may determine, in consultation with the Consultation Parties to withdraw the Assets or any subset thereoffrom the Auction and Sale process, and adjourn the Sale Hearing with respect to these assets on the terms set forth herein.

The Debtor shall consult with the Consultation Parties as explicitly provided for in these Bid Procedures; provided, however, that the Debtor shall not be required to consult with any Consultation Party (or its advisors) that submits a Bid or has a Bid submitted on its behalf for so long as such Bid remains open, including any credit bid, if the Debtor determines, in its reasonable business judgment, that consulting with such Consultation Party regarding any issue, selection, or determination is (a) likely to have a chilling effect on the potential bidding or (b) otherwise contrary to the goal of maximizing value from the sale process for the Debtor's estate, its creditors, and all other parties in interest.

Next-Highest Bidder

Notwithstanding any of the foregoing, in the event that a Successful Bidder fails to close a Sale prior to such date as specified in the Purchase Agreement or Stalking Horse APA, as applicable, the Debtor, upon written notice to the Next-Highest Bidder, may designate the applicable Next-Highest Bid as the Successful Bid for the Assets (or subset thereof), the Next-Highest Bidder will be deemed to be the Successful Bidder for such Assets, and the Debtor will be authorized, but not directed, to close the Sale to the Next-Highest Bidder subject to the terms of the Next-Highest Bid without the need for further order of the Bankruptcy Court and without the need for further notice to any interested parties.

EXHIBIT 2

Notice of Auction and Sale Hearing

(see attached)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
US MAGNESIUM LLC,[1]	)	
	)	Case No. 25-11696 (BLS)
Debtor.	)	
	)	

NOTICE OF SALE BY AUCTION AND SALE HEARING

PLEASE TAKE NOTICE that on September 15, 2025, the above-captioned debtor and debtor in possession (the "**Debtor**") filed the *Debtor's Motion For Entry of (I) an Order (A) Approving Bid Procedures in Connection With The Sale of Substantially All of The Debtor's Assets, (B) Approving The Form and Manner of Notice Thereof, (C) Scheduling an Auction and Sale Hearing, (D) Approving Procedures For The Assumption and Assignment of Contracts and Leases, and (E) Granting Related Relief and (II) an Order (A) Approving The Stalking Horse APA Between The Debtor and The Stalking Horse Bidder, (B) Authorizing The Sale to The Stalking Horse Bidder or The Successful Bidder of Substantially All of The Debtor's Assets Free and Clear Of Liens, Claims, Encumbrances, and Interests, (C) Authorizing The Assumption and Assignment of Contracts and Leases, and (D) Granting Related Relief* [Docket No. __] (the "**Motion**")[2] with the United States Bankruptcy Court for the District of Delaware (the "**Court**") seeking, among other things, entry of an order (the "**Sale Order**") authorizing and approving: (a) the sale of substantially all of the Debtor's assets (the "**Assets**") free and clear of liens, claims, encumbrances, and other interests, with all such liens, claims, encumbrances, and other interests attaching with the same validity and priority to the sale proceeds, subject to higher or otherwise better offers (the "**Sale**"); and (b) authorizing the assumption and assignment of executory contracts (collectively, the "**Contracts**"). Please note that all capitalized terms used but not defined herein shall have the meanings set forth in the Motion.

PLEASE TAKE FURTHER NOTICE that the Debtor is soliciting offers for the purchase of the Assets of the Debtor consistent with the Bid Procedures (the "**Bid Procedures**") approved by the Court by entry of an order on _________ __, 2025 [Docket No. __] (the "**Bid Procedures Order**"). **<u>All interested bidders should carefully read the Bid Procedures and Bid Procedures Order.</u>** To the extent that there are any inconsistencies between this notice and the Bid Procedures or Bid Procedures Order, the Bid Procedures or Bid Procedures Order, as applicable, shall govern in all respects.

PLEASE TAKE FURTHER NOTICE that, if the Debtor receives qualified competing bids within the requirements and time frame specified by the Bid Procedures, the Debtor will conduct an auction (the "**Auction**") of the Assets on **<u>October 31, 2025, at 10:00 a.m. (ET)]</u>** at the offices of Gellert Seitz Busenkell & Brown, LLC, 1201 N. Orange St., 3rd Floor, Wilmington,

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[1] The last four digits of the Debtor's federal tax identification number are5446. The Debtor's service address for the purpose of this chapter 11 case is: 238 N. 2200 W. Salt Lake City, UT 84116.

[2] Capitalized terms not otherwise defined herein shall have the same meaning as in the Motion.

DE 19801 (or at any other location as the Debtor may hereafter designate on proper notice). The auction will also be held by Zoom.

PLEASE TAKE FURTHER NOTICE that the Debtor will seek approval of the Sale at a hearing scheduled to commence on or before **November 7, 2025] at T.B.D. (ET)]** (the "**Sale Hearing**") before the Honorable Brendan L. Shannon, United States Bankruptcy Judge for the Bankruptcy Court for the District of Delaware, at Courtroom No. 1, 6th Floor, 824 N. Market St., Wilmington, DE 19801.

PLEASE TAKE FURTHER NOTICE that, except as otherwise set forth in the Bid Procedures Order with respect to any objections to proposed cure amounts or the assumption and assignment of Contracts, objections to the relief requested in the Motion ***must***: (a) be in writing; (b) conform to the applicable provisions of the Bankruptcy Rules and the Local Rules; (c) state with particularity the legal and factual basis for the objection and the specific grounds therefor; and (d) be filed with the Court and served so as to be ***actually received*** by **4:00 p.m. (ET) on or before November 4, 2025,** by the following parties (the "**Notice Parties**"):

Counsel to the Debtor	**Counsel to Wells Fargo, National Association**
Gellert Seitz Busenkell & Brown, LLC 1201 N. Orange St. 3rd Floor Wilmington, Delaware 19801 Attn: Michael Busenkell mbusenkell@gsbblaw.com	Otterbourg PC 230 Park Avenue New York, New York 10169-0075 Attn: Jonathan Helfat jhelfat@otterbourg.com
The United States Trustee	
Office of the United States Trustee for the District of Delaware Jane Leamy, Esq. J. Caleb Boggs Building 844 King Street Suite 2207 Lockbox 35 Wilmington, Delaware 19801 jleamy@usdoj.gov	

CONSEQUENCES OF FAILING TO TIMELY MAKE AN OBJECTION

ANY PARTY OR ENTITY WHO FAILS TO TIMELY MAKE AN OBJECTION TO THE SALE ON OR BEFORE THE SALE OBJECTION DEADLINE IN ACCORDANCE WITH THE BID PROCEDURES ORDER MAY BE FOREVER BARRED FROM ASSERTING ANY OBJECTION TO THE SALE, INCLUDING WITH RESPECT TO THE TRANSFER OF THE DEBTOR'S ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, EXCEPT AS SET FORTH IN THE APPLICABLE PURCHASE AGREEMENT.

PLEASE TAKE FURTHER NOTICE that copies of the Sale Motion, Bid Procedures, and Bid Procedures Order, as well as all related exhibits, including the proposed Sale Order, and additional information are available: (a) upon request to Debtor's counsel or (b) for a fee via PACER by visiting https://ecf.deb.uscourts.gov/.

Dated: September 15, 2025
Wilmington, Delaware

GELLERT SEITZ BUSENKELL & BROWN, LLC

/s/ Michael Busenkell

Michael Busenkell (No. 3933)
Margaret M. Manning (No. 4183)
Michael Van Gorder (No. 6214)
1201 North Orange Street, Suite 300
Wilmington, Delaware 19801
Telephone: (302) 425-5800
Facsimile: (302) 425-5814
Email: mbusenkell@gsbblaw.com

Proposed Attorneys for
Debtor and Debtor-in- Possession

EXHIBIT 3

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: US MAGNESIUM LLC, Debtor. [1]	Chapter 11 Case. No. 25-11696 (BLS)

NOTICE OF POTENTIAL CONTRACT ASSUMPTION AND ASSIGNMENT

PLEASE TAKE NOTICE that on [________, 2025], the above-captioned debtor and debtor in possession (the "**Debtor**") filed the *Debtor's Motion For Entry of (I) an Order (A) Approving Bid Procedures in Connection With The Sale of Substantially All of The Debtor's Assets, (B) Approving The Form and Manner of Notice Thereof, (C) Scheduling an Auction and Sale Hearing, (D) Approving Procedures For The Assumption and Assignment of Contracts and Leases, and (E) Granting Related Relief and (II) an Order (A) Approving The Stalking Horse APA Between The Debtor and The Stalking Horse Bidder, (B) Authorizing The Sale to The Stalking Horse Bidder or The Successful Bidder of Substantially All of The Debtor's Assets Free and Clear Of Liens, Claims, Encumbrances, and Interests, (C) Authorizing The Assumption and Assignment of Contracts and Leases, and (D) Granting Related Relief* [Docket No. [ ] (the "**Sale Motion**") with the United States Bankruptcy Court for the District of Delaware (the "**Court**") seeking, among other things, entry of an order (the "**Sale Order**") authorizing and approving: (a) the sale of substantially all of the Debtor's assets (the "**Assets**") free and clear of liens, claims, encumbrances, and other interests, with all such liens, claims, encumbrances, and other interests attaching with the same validity and priority to the sale proceeds, except as set forth in the applicable Purchase Agreement and subject to higher or otherwise better offers (the "**Sale**"); and (b) procedures for the assumption and assignment of executory contracts and unexpired leases (collectively, the "**Contracts**"). Please note that all capitalized terms used but not defined herein shall have the meanings set forth in the Sale Motion.

PLEASE TAKE FURTHER NOTICE that the Court entered an order [D.I. No. _____] (the "**Bid Procedures Order**") granting certain of the relief sought in the Sale Motion, including, among other things, approving: (a) the Bid Procedures (the "**Bid Procedures**") for the Sale of the Assets; and (b) procedures for the assumption and assignment of the Contracts (the "**Assumption Procedures**").

PLEASE TAKE FURTHER NOTICE that the Debtor will seek approval of the Sale at a hearing scheduled to commence on or before **November 7,2025 at ______ .m. (ET)** (the "**Sale Hearing**") before the Honorable Brendan L. Shannon, United States Bankruptcy Judge for the

[1] The last four digits of the Debtor's federal tax identification number are 3143. The Debtor's service address for the purpose of this chapter 11 case is: 2447 Technology Way, Springdale, AR 72764.

Bankruptcy Court for the District of Delaware, Sixth Floor, Courtroom No. 1, 824 N. Market St., Wilmington, DE 19801.

PLEASE TAKE FURTHER NOTICE that upon the closing of the Sale, the Debtor intends to assume and assign to the Successful Bidder arising from the Auction (as defined in the Bid Procedures Order), the Contracts and Leases and any modifications thereto (collectively, the "**Assigned Contracts**") set forth on Exhibit A attached hereto, subject to (a) the Successful Bidder's right to designate additional Contracts as Assigned Contracts or remove certain Contracts from the list of Assigned Contracts or (b) any similar right of any other Successful Bidder arising from the Auction. In addition, the cure amounts, if any, necessary for the assumption and assignment of the Assigned Contracts (the "**Cure Amounts**") are set forth on Exhibit A attached hereto.

PLEASE TAKE FURTHER NOTICE that the Debtor has evaluated the financial wherewithal of the Successful Bidder (*e.g.*, financial credibility, willingness, and ability of the interested party to perform under the Contracts) and believes that the Successful Bidder's financial health, agreement to pay cure amounts related to the Assigned Contracts, and commitment to pay obligations as they come due satisfies the requirements of adequate assurance of future performance under section 365(f)(2)(B) of the Bankruptcy Code.

PLEASE TAKE FURTHER NOTICE that, after the Bid Deadline has occurred, the Debtor will separately identify the Contracts designated for assumption and assignment by each Qualified Bidder and furnish adequate assurance information demonstrating the ability of each Qualified Bidder to comply with the requirements of adequate assurance of future performance under section 365(f)(2)(B) of the Bankruptcy Code, including, without limitation, each Qualified Bidder's financial wherewithal and willingness to perform under the Assigned Contracts.

Obtaining Additional Information

Copies of the Sale Motion, Bid Procedures, and Bid Procedures Order, as well as all related exhibits, including the proposed Sale Order, are available on the website of the Debtor's Claims Agent, Stretto, https://cases.stretto.com/usmagnesium/

Filing Assumption and Assignment Objections

Pursuant to the Assumption Procedures, objections to the proposed assumption and assignment of an Assigned Contract, including any objection relating to the Cure Amount and/or adequate assurance of future performance (collectively, a "**Contract Objection**"), must: (a) be in writing; (b) state with specificity the nature of such objection and alleged Cure Amount, including applicable and appropriate documentation in support of such alleged Cure Amount; (c) comply with the Bankruptcy Rules and the Local Rules; (d) for Contract Objections to any Cure Amount set forth on Exhibit A attached hereto or to the assumption and assignment of an Assigned Contract to the Successful Bidder, be filed with the Court and served so as to be ***actually received*** on the earlier of **4:00 p.m. (ET) seven days from service of this notice or the Sale Hearing**; and (e) for Contract Objections to the adequate assurance of future performance by a Qualified Bidder, be filed with the Court and served so as to be ***actually received*** by **_________, 2025, at 12:00 p.m. (ET)**.

Any timely filed Contract Objections made prior to the Sale Hearing will be considered at the Sale Hearing, or another date agreed to by the parties, and must be served on the following parties:

Counsel to the Debtor	**Counsel to Wells Fargo, National Association**
Gellert Seitz Busenkell & Brown, LLC 1201 N. Orange St. 3rd Floor Wilmington, Delaware 19801 Attn: Michael Busenkell mbusenkell@gsbblaw.com	Otterbourg PC 230 Park Avenue New York, New York 10169-0075 Attn: Jonathan Helfat jhelfat@otterbourg.com
Counsel to the Official Committee of Unsecured Creditors	**The United States Trustee**
	Office of the United States Trustee for the District of Delaware J. Caleb Boggs Building 844 King Street, Suite 2207 Lockbox 35 Wilmington, Delaware 19801 Attn: Jane Leamy

If any timely filed Contract Objection cannot be resolved by the Successful Bidder arising from the Auction, if any, and the objecting party, the Court shall resolve such Contract Objection prior to assumption and assignment of such designated Contract, and upon entry of an order by the Court resolving such Contract Objection, the assignment, if approved by the Court, shall be deemed effective as of the date such objecting party receives the Assumption Notice. To the extent that any Contract Objection cannot be resolved by the parties, such Contract shall be assumed and assigned only upon satisfactory resolution of the Contract Objection, to be determined in the reasonable discretion of the Successful Bidder arising from the Auction, if any, and until such time as the Contract Objection can be resolved, the Contract shall be conditionally assumed and assigned pending a resolution of the Contract Objection after notice and a hearing.

CONSEQUENCES OF FAILING TO TIMELY FILE AND SERVE AN OBJECTION

ANY COUNTERPARTY TO AN ASSIGNED CONTRACT WHO FAILS TO TIMELY FILE AND SERVE AN OBJECTION TO THE PROPOSED ASSUMPTION AND ASSIGNMENT OF AN ASSIGNED CONTRACT AND/OR THE CURE AMOUNT SET FORTH ON EXHIBIT A ATTACHED HERETO IN ACCORDANCE WITH THE BID PROCEDURES ORDER AND THE ASSUMPTION PROCEDURES SHALL BE FOREVER BARRED FROM ASSERTING ANY OBJECTION TO THE ASSUMPTION AND ASSIGNMENT OF THE ASSIGNED CONTRACT AND/OR THE CURE AMOUNT SET FORTH ON EXHIBIT A ATTACHED HERETO, INCLUDING ASSERTING ADDITIONAL CURE AMOUNTS WITH RESPECT TO THE ASSIGNED CONTRACT

RELATING TO ANY PERIOD PRIOR TO THE TIME OF ASSUMPTION AND ASSIGNMENT.

Dated: September 15, 2025

GELLERT SEITZ BUSENKELL & BROWN, LLC

/s/ Michael Busenkell
Michael Busenkell (DE 3933)
Margaret M. Manning (DE 4183)
Michael Van Gorder (DE 6214)
1201 North Orange Street, Suite 300
Wilmington, Delaware 19801
Telephone: (302) 425-5800
Facsimile: (302) 425-5814
Email: mbusenkell@gsbblaw.com
mmanning@gsbblaw.com
mvangorder@gsbblaw.com

Proposed Counsel to the Debtor and Debtor-in-Possession

Exhibit A

Assigned Contracts[2]

Debtor	Counterparty	Description of Assigned Contract or Lease	Cure Amount

[2] The presence of a contract or lease on this Exhibit A does not constitute an admission by the Debtor that such contract is an executory contract or such lease is an unexpired lease pursuant to section 365 of the Bankruptcy Code or any other applicable law, and the Debtor reserves all rights to withdraw any proposed assumption and assignment or to reject any contract or lease at any time before such contract or lease is assumed and assigned pursuant to an order of the Court.

<u>EXHIBIT B</u>

MW Draft 9/15/25

ASSET PURCHASE AGREEMENT

DATED AS OF [●], 2025

BY AND BETWEEN

US MAGNESIUM LLC

AS SELLER

AND

LIMAG HOLDINGS LLC

AS PURCHASER

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "***Agreement***"), dated as of [●], 2025, is by and between LiMag Holdings LLC, a Delaware limited liability company ("***Purchaser***"), and US Magnesium, LLC, a Delaware limited liability company ("***Seller***" and, collectively with Purchaser, a "***Party***" and, together the "***Parties***"). Certain capitalized terms used herein are defined in Article I.

RECITALS

WHEREAS, Seller is engaged in the conduct of the Business;

WHEREAS, Seller will commence a voluntary case (the "***Bankruptcy Case***") under chapter 11 of title 11 of the United States Code (the "***Bankruptcy Code***") by filing a petition for relief in the United States Bankruptcy Court for the District of Delaware (the "***Bankruptcy Court***");

WHEREAS, Purchaser desires to purchase the Purchased Assets and assume the Assumed Liabilities from Seller, and Seller desires to sell and assign the Purchased Assets and the Assumed Liabilities to Purchaser, pursuant to, among other provisions thereof, section 363 of the Bankruptcy Code, for the consideration contained in, and upon the terms and conditions of, this Agreement;

WHEREAS, Seller will seek entry by the Bankruptcy Court of the Bidding Procedures Order approving the Bidding Procedures;

WHEREAS, Purchaser and Seller intend, among other things, that following the execution of this Agreement, Purchaser will act as a "stalking horse bidder" pursuant to the Bidding Procedures for the Purchased Assets; and

WHEREAS, Seller's ability, and Purchaser's willingness, to consummate the transactions set forth in this Agreement are subject to, among other things, the entry of the Sale Order by the Bankruptcy Court.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, representations and warranties contained herein, and for their mutual reliance, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS

1.1 **Definitions**. The following terms have the following meanings for the purposes of this Agreement:

"***Accounts Receivable***" means any and all accounts, notes, trade, and other receivables owed to Seller, all in accordance with GAAP, consistently applied in accordance with past practices, together with all security or collateral thereof and any interest or unpaid financing charges accrued thereon, including vendor/supplier, Employee and other receivables, and all Actions pertaining to the collection of amounts that are payable, or that may become payable, to Seller with respect to products sold or services performed prior to the Closing, net of any applicable reserve for returns, discounts, doubtful accounts or other similar deductions reflected thereon.

"***Ace Commercial Tort Claim***" means all tort claims of any nature arising out of the physical damage to a gas turbine at the Facility, including, without limitation, the action by Borrower in US Magnesium LLC v. ACE American Insurance Company (Civil Case No. 250400910) filed with the Court of Common Pleas, Philadelphia County, Pennsylvania, and all damages, relief at law or equity, payments, income or fees, and any other proceeds (including, without limitation, insurance proceeds) of any kind or in any form related to such claims.

"***Action***" means any action, suit, claim, counterclaim, demand, hearing, summons, litigation, investigation, prosecution, contest, inquest, audit, examination, proceeding (including any civil, criminal, administrative, investigative, appellate, or eminent domain proceeding), condemnation, mediation, arbitration, dispute, or similar matter by or before any Governmental Authority.

"***Affiliate***" means, with respect to any Person, any other Person directly or indirectly, controlling, controlled by, or under common control with, such Person as of the date on which, or any time during the period for which, the determination of affiliation is being made. For purposes of this definition, "control" (including, with correlative meaning, the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

"***Agreement***" has the meaning set forth in the preamble and all other exhibits and schedules hereto, as it and they may be amended from time to time.

"***Allowed Professional Fees***" has the meaning ascribed to such term in the Financing Orders.

"***Alternative Transaction***" means any transaction or series of transactions (whether pursuant to section 363 or 1129 of the Bankruptcy Code or pursuant to any applicable non-bankruptcy law), whereby any Person or group of Persons (other than Purchaser and/or its Affiliates) acquires (a) all, or a material portion of, the Purchased Assets, (b) beneficial ownership of a majority of the Equity Interests of Seller, or (c) any other transaction the consummation of which would be substantially inconsistent with the transactions contemplated by this Agreement, in each case, whether by merger, sale of assets or equity, transfer, exchange, recapitalization, plan of reorganization or otherwise.

"***Applicable Laws***" means, with respect to any Person, any Law, Order, or other similar requirement enacted, adopted, promulgated, enforced or applied by any Governmental Authority that is binding upon or applicable to such Person or its assets or properties, as amended unless expressly specified otherwise.

"***Applicable Seller Prepared Returns***" has the meaning set forth in Section 5.8(d)(i).

"***Assigned Actions***" has the meaning set forth in Section 2.1(l).

"***Assumed Contracts***" has the meaning set forth in Section 2.1(f).

"***Assumed Liabilities***" has the meaning set forth in Section 2.3.

"***Assumed PTO***" has the meaning set forth in Section 2.3(i).

"***Auction***" has the meaning set forth in the Bidding Procedures Order.

"***Avoidance Action***" means any avoidance claims, rights, recoveries, subordinations or causes of action or remedies under chapter 5 of the Bankruptcy Code, including any proceeds thereof, and any analogous state law claims, in each case, of Seller and its bankruptcy estate that relate to the Purchased Assets or the Business.

"***Back-Up Bidder***" has the meaning set forth in the Bidding Procedures Order.

"***Bankruptcy Case***" has the meaning ascribed to such term in the recitals of the Agreement.

"***Bankruptcy Code***" has the meaning ascribed to such term in the recitals of the Agreement.

"***Bankruptcy Court***" has the meaning ascribed to such term in the recitals of the Agreement.

"***Bankruptcy Rules***" means the Federal Rules of Bankruptcy Procedure.

"***Benefit Plans***" means (a) any "employee welfare benefit plan" or "employee pension benefit plan" (as those terms are respectively defined in Sections 3(1) and 3(2) of ERISA); and (b) any retirement or deferred compensation plan, incentive compensation, employment, change-in-control, retention, compensation, employee loan, consulting, severance, stock, share appreciation right, unemployment compensation, vacation pay, severance pay, bonus arrangement, health benefit, profit-sharing, death or disability plan, agreement, commitment, program, policy, practice or arrangement or any other welfare or fringe benefit arrangements in each case in which any Employees participate or with respect to which Seller has or may have any liability.

"***Bidding Procedures***" has the meaning set forth in the Bidding Procedures Motion.

"***Bidding Procedures Motion***" means one or more motions filed in the Bankruptcy Case by Seller, in each case in form and substance acceptable to Purchaser and served on creditors and parties in interest in accordance with the Bankruptcy Rules, which motion(s) seeks, among other things, (i) authority from the Bankruptcy Court for Seller to enter into this Agreement and to consummate the transactions contemplated by this Agreement, (ii) approval of the Bidding Procedures, (iii) approving certain stalking horse protections as may be identified therein, (iv) scheduling an Auction, if necessary, (v) scheduling a Sale Hearing, (vi) authorizing the assumption and assignment of executory contracts and unexpired leases, and (vii) approving the form and manner of notice thereof.

"***Bidding Procedures Order***" means the order of the Bankruptcy Court, proposed in the Bidding Procedures Motion, in form and substance acceptable to Purchaser in its sole discretion and as set forth in Exhibit 1.1(b), approving the Bidding Procedures Motion and the Bidding Procedures.

"***Bill of Sale, Assignment and Assumption Agreement***" has the meaning set forth in Section 2.8(b)(i).

"***Bridge Loan Agreement***" means that certain Subordinated Loan Agreement dated August 28, 2025 by and among The Renco Group, Inc., as lender, and Seller, as borrower.

"***Bridge Loan Agreement Obligations***" means the outstanding indebtedness as of the Petition Date in an aggregate amount equal to $1,068,039.73 due under the Bridge Loan Agreement, together with any and all interest, fees and expenses accrued or accruing thereon from and after the Petition Date through and including the Closing Date, in each case to the extent not discharged in the Bankruptcy Case or otherwise satisfied.

"***Business***" means the business of producing magnesium, magnesium chloride, magnesium alloys, lithium carbonate, and other minerals, salts, and chemicals including liquid chlorine, hydrochloric acid, ferric chloride, calcium chloride, sodium chloride and potassium salts, along with certain activities ancillary thereto (including, but not limited to, operation of the Purchased Assets), conducted by Seller in the Ordinary Course of Business.

"***Business Day***" means any day other than a Saturday, Sunday or other day on which banking institutions in New York City, New York are authorized or required by law or other action of a Governmental Authority to close.

"***Cash and Cash Equivalents***" means, collectively, all of Seller's cash (including petty cash and checks received prior to the close of business on the Closing Date), checking account balances, marketable securities, certificates of deposits, time deposits, bank deposits, other deposits, bankers' acceptances, commercial paper, government securities, investment accounts and other cash equivalents whether on hand, in transit, in banks or other financial institutions, or otherwise held, net of uncleared checks issued by Seller that are not yet reflected in the applicable bank account of Seller.

"***Cash Consideration***" means cash in an amount necessary to close the transactions contemplated herein in an amount not to exceed $250,000.

"***Claim***" has the meaning given that term in section 101(5) of the Bankruptcy Code.

"***Closing***" means the consummation of the transaction contemplated herein.

"***Closing Date***" has the meaning set forth in Section 2.8(a).

"***Closing Date Payment***" has the meaning set forth in Section 2.5.

"***COBRA***" means and refer to the applicable requirements of Part 6 of Subtitle B of Title I of ERISA and Section 4980B of the Code (and predecessors thereof).

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

"***Consent***" means any approval, consent, ratification, permission, waiver, license, or other authorization, or an Order of the Bankruptcy Court that deems or renders unnecessary the same.

"***Consent Decree***" shall mean that certain Consent Decree entered on June 30, 2021 in the case of *United States of America v. Magnesium Corporation of America et al.* in the United States District Court for the District of Utah, Case No. 01-cv-40, at Docket No. 456, including all appendices thereto filed in the same case at Docket No. 447.

"***Contract***" means any contract, agreement, grant, sub-grant, arrangement, understanding, commitment, ground lease, lease, sublease, license, mortgage, guarantee, bond, note or other instrument (including any instrument evidencing Indebtedness), or other legally binding obligation, and all amendments thereof (whether written or oral).

"***Credit Bid Amount***" means an aggregate amount equal to the Wells Term Loan C Participation Amount, together with any and all interest, fees, and expenses accrued or accruing thereon from and after the Petition Date through and including the Closing Date, plus all outstanding indebtedness due under the Tranche B DIP Term Loans, in each case to the extent not discharged in the Bankruptcy Case or otherwise satisfied.

"***Cure Costs***" means the monetary amounts that must be paid under sections 365(b)(1)(A) and (B) of the Bankruptcy Code in connection with the assumption and/or assignment of any Assumed Contract, or Permits, as agreed upon by the Parties or determined by the Bankruptcy Court pursuant to procedures contained in the Bidding Procedures Order.

"***Cure Payments***" has the meaning set forth in Section 2.5.

"***Data Room***" means that certain virtual data room entitled "US Magnesium" SmartRoom established by Seller on September 8, 2025.

"***Deed***" has the meaning set forth in Section 2.8(b)(v).

"***Employees***" means all full-time and part-time employees employed by Seller immediately prior to the Closing Date in connection with the Business.

"***Enforceability Exceptions***" has the meaning set forth in Section 3.2.

"***Environmental Law***" means any and all federal, state, local and foreign statutes, laws, including applicable common law, regulations, ordinances, rules, judgments, orders, decrees or governmental restrictions relating to pollution, the protection of the environment, the Release of Hazardous Materials into the environment or human exposure to Hazardous Materials, including those related to the treatment, transport, storage and disposal of Hazardous Materials, air emissions and discharges to public wastewater treatment systems.

"***Environmental Liabilities***" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, monitoring or oversight by a Governmental Authority, fines, or penalties), of Seller directly or indirectly resulting from or based upon (a) any actual or alleged violation of any Environmental Law; (b) the generation, use, handling, transportation, storage, treatment, or disposal of any Hazardous Materials; (c) human exposure to any Hazardous Materials; (d) the Release or threatened Release of any Hazardous Materials into the environment; or (e) any contract, agreement, or other binding consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"***Environmental Permit***" means any Permit, approval, identification number, license or other authorization required under any Environmental Law.

"***Equity Interests***" means, with respect to any Person, all of the shares, interests, rights, participations or other equivalents (however designated) of capital stock of (or other ownership or profit interests or units in) such Person and all of the warrants, options or other rights for the purchase, acquisition or exchange from such Person of any of the foregoing (including through convertible securities).

"***ERISA***" means the Employee Retirement Income Security Act of 1974, and the rules and regulations thereunder, each as amended or modified from time to time.

"***ERISA Affiliate***" means, with respect to any Person, any entity, trade or business that is, or at any applicable time was, a member of a group described in Section 414(b), (c), (m) or (o) of the Code or Section 4001(b)(1) of ERISA that includes such Person.

"***Excluded Assets***" has the meaning set forth in Section 2.2.

"***Excluded Contracts***" has the meaning set forth in Section 2.2(c).

"***Excluded Liabilities***" has the meaning set forth in Section 2.4.

"***Expenses***" means the out-of-pocket fees and expenses of a Party's independent advisor, counsel and accountants, incurred or paid by such party or on its behalf in connection with this Agreement and the transactions contemplated hereby.

"***Facility***" means the facilities of Seller located in Tooele County, Utah, including any and all real and personal property thereon.

"***Financing Orders***" has the meaning ascribed to such term in the Ratification Agreement.

"***Fixtures and Equipment***" means all buildings, structures, improvements to the Owned Real Property, furniture, furnishings, vehicles, equipment, machinery, tools, fixtures, IT Equipment and other personal and mixed property, operation and nonoperational, that are Related to the Business, wherever located, including any of the foregoing purchased subject to any conditional sales or title retention agreement in favor of any other Person, except to the extent included in Excluded Assets. "Fixtures and Equipment" shall include all rights under any leases relating to, arising from, or with respect to such Fixtures and Equipment, to the extent such leases constitute Assumed Contracts.

"***GAAP***" means generally accepted accounting principles in the United States, as in effect from time to time.

"***Governmental Authority***" means any U.S., state, local or foreign governmental, regulatory or administrative body, agency or authority, any court or judicial authority or arbitration tribunal, whether national, Federal, state or local or otherwise, or any Person lawfully empowered by any of the foregoing to enforce or seek compliance with any applicable law, statute, regulation, order, or decree.

"***Hazardous Material***" means any chemicals, materials, or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "hazardous constituents," "restricted hazardous materials," "extremely hazardous substances," "toxic substances," "contaminants," "pollutants," "toxic pollutants," under any Environmental Law or for which liability or standards of conduct may be imposed pursuant to Environmental Law, including petroleum and petroleum products, by-products, derivatives or wastes, radioactive materials, asbestos or asbestos-containing materials or products, per- and polyfluoroalkyl substances, polychlorinated biphenyls (PCBs) or materials containing same, lead or lead-based paints or materials, radon, fungus, mold in quantities or concentrations that may adversely affect human health or materially affect the value or utility of the building(s) in which it is present, or other substances that may have an adverse effect on human health or the environment.

"***Income Tax***" means any United States or foreign, federal, state, provincial, municipal, or county Tax that, in whole or in part, is based on, measured by or calculated by reference to net income, profits or gains, including any state or local franchise Tax, and including any interest, penalty or addition thereto, whether disputed or not.

"***Income Tax Returns***" means any Tax Return with respect to Income Taxes.

"***Indebtedness***" means, with respect to any Person, without duplication, the outstanding principal amount of, accrued and unpaid interest on, and other payment obligations (including any prepayment premiums or penalties payable as a result of the repayment thereof) arising under, any obligations consisting of (a) indebtedness for borrowed money or indebtedness issued in substitution or exchange for borrowed money for the deferred purchase price of property or services, (b) indebtedness evidenced by any note, bond, debenture or other debt security, (c) all obligations under financing or capital leases, including obligations created or arising under any conditional sale or other title retention agreement, or incurred as financing, (d) all deferred obligations to reimburse any bank or other Person in respect of amounts paid or advanced under a letter of credit, surety bond, performance bond or other instrument, (e) all Liabilities in respect of letters of credit and bankers' acceptances, to the extent drawn and payable, (f) all Liabilities in respect of "earn-out" obligations and other obligations for the deferred purchase price of property, assets, or services, including any royalty or "earn-out" payments (other than trade payables or accruals incurred in the ordinary course of business), (g) book overdraft, and (h) all Indebtedness of others guaranteed, directly or indirectly, by such Person or as to which such Person has an obligation (contingent or otherwise) that is substantially the economic equivalent of a guarantee or that is otherwise recognized in the financial statements of such Person; and (i) all obligations of the type referred to in clauses (a) through (h) of any Persons for the payment of which such Person is responsible or liable, directly or indirectly, as obligor, guarantor, surety or otherwise, including guarantees of such obligations.

"***Intellectual Property***" means all intellectual property rights of any kind owned and/or licensed by any Seller and used in connection with the Business, including without limitation all U.S., Canadian and foreign software, copyrights, patents, trademarks, trade secrets, domain name registrations, all rights to privacy and personal information, and all rights and remedies related thereto (including the right to sue for and recover damages, profits and any other remedy in connection therewith) for past, present or future infringement, misappropriation or other violation relating to any of the foregoing, and all applications and registrations for any of the foregoing.

"***Inventory***" means all inventory Related to the Business, wherever located, including all finished goods whether held at any location or facility of Seller or any of its Affiliates or in transit to Seller or any of its Affiliates, all semi-finished and finished goods, raw materials, works in progress, samples, prototypes, displays, packaging, supplies, tooling and parts, together with all rights of Seller against suppliers thereof, in each case, as of the Closing Date, except to the extent included in Excluded Assets.

"***IP Assignment***" has the meaning set forth in Section 2.8(b)(ii).

"***IT Equipment***" means networks and communications equipment, information technology assets, network appliances, and storage devices, and any attached and associated hardware, routers, devices, panels, cables, manuals, cords, connectors, cards, and vendor documents, and including all warranties of the vendor applicable thereto.

"***Law***" means any and all applicable international, foreign, federal, state and local laws (statutory, common or otherwise, and including international conventions, protocols and treaties), acts, statutes, constitutions, treaties, conventions, rules, guidelines, regulations, ordinances, codes, policies, and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority.

"***Lease Assignment Agreement***" has the meaning set forth in Section 2.8(b)(vi).

"***Leased Real Property***" means the property identified on Schedule 1.1(a).

"***Liability***" means any debt, loss, Claim, damage, demand, fine, judgment, penalty, liability or obligation (whether direct or indirect, known or unknown, absolute or contingent, asserted or unasserted, accrued or unaccrued, matured or unmatured, determined or determinable, liquidated or unliquidated, or due or to become due, and whether in contract, tort, strict liability, successor liability or otherwise), and including all costs and expenses relating thereto (including fees, discounts and expenses of legal counsel, experts, engineers and consultants and costs of investigations).

"***Lien***" means any mortgage, pledge, hypothecation, collateral assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property having substantially the same economic effect as any of the foregoing).

"***Material Adverse Effect***" means any change, event, circumstance, occurrence, condition, development, fact, or state of facts occurring that has had or could reasonably be expected to have, individually or in the aggregate, a material adverse effect on the Business and/or Purchased Assets.

"***Notice of Successful Bidder***" has the meaning set forth in the Bidding Procedures Order.

"***Order***" means any order, judgment, decree, award, decision, injunction, order, ruling, writ, award, subpoena, or verdict entered, issued, made, or rendered by any court, administrative agency, or other Governmental Authority or by any arbitrator, including any order entered by the Bankruptcy Court in the Bankruptcy Case.

"***Ordinary Course of Business***" and similar terms means the ordinary and usual course of operations of the Business, taken as a whole, taking into account the contemplation, commencement and pendency of the Bankruptcy Case and recent past practice.

"***Owned Real Property***" means the property identified on <u>Schedule 1.1(b)</u>.

"***Party***" and "***Parties***" each has the meaning set forth in the preamble.

"***PBGC***" means the Pension Benefit Guaranty Corporation.

"***Permit***" means any consent, license, permit, certificate, clearance, qualification, franchise, waiver, approval, authorization, certificate, registration, certificate of occupancy or filing issued by, obtained from, or made with a Governmental Authority or that are otherwise necessary for Seller to own the Purchased Assets or operate the Business.

"***Permitted Access Parties***" has the meaning set forth in <u>Section 5.4(a)</u>.

"***Permitted Liens***" means, as of the Closing Date, all (a) Liens for Taxes, assessments and governmental charges or levies not yet delinquent or for which adequate reserves are maintained on the financial statements of Seller; (b) Liens imposed by law, such as materialmen's, mechanics', carriers', workmen's and repairmen's liens and other similar liens arising in the Ordinary Course of Business securing obligations that are not overdue or which are being contested in good faith by appropriate proceedings and for which adequate reserves are maintained on the financial statements of Seller; (c) pledges or deposits to secure obligations under workers' compensation laws or similar legislation or to secure public or statutory obligations that are not otherwise due or delinquent; (d) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the Ordinary Course of Business consistent with past practice and set forth on the financial statements of Seller; (e) all matters of record, including survey exceptions, reciprocal easement agreements and other encumbrances on title to real property; (f) all applicable zoning, entitlement, conservation restrictions and other land use and environmental regulations; (g) all exceptions, restrictions, easements, charges, rights-of-way and other Liens set forth in any permits, any deed restrictions, groundwater or land use limitations or other institutional controls utilized in connection with any required environmental remedial actions, or other state, local or municipal franchise applicable to Seller or any of their respective properties; and (h) Liens referred to on <u>Schedule 1.1(c)</u>.

"***Permitted Post-Closing Encumbrance***" means (a) zoning restrictions, building codes and other land use laws regulating the use or occupancy of real property and imperfections in title, charges, easements, rights of way, covenants, restrictions, licenses and other Liens that do not materially affect the value, use or transferability of the affected asset or property or materially interfere with the operation of the assets or property to which they relate; (b) Liens on the interest of any landlord or sublandlord or underlying fee interest of any real property lease, but only those not extinguished by the Sale Order; (c) mechanics', carriers', workmen's, repairmen's or other similar Liens arising or incurred in the Ordinary Course of Business for amounts which are (i) not due and payable, and (ii) not, individually or in the aggregate, material to the Business or the Purchased Assets; and (d) Liens for Taxes, assessments or other governmental charges or levies that are not yet due or payable or are being contested in good faith by appropriate proceedings with reserves taken pursuant to applicable accounting standards.

"***Person***" means an individual, corporation, partnership, joint venture, trust, association, estate, joint stock company, limited liability company, unincorporated organization, Governmental Authority or any other organization of any kind.

"***Personal Information***" means any information that (a) relates to an identified or identifiable natural person; an "identifiable person" is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his, her, or their physical, physiological, mental, economic, cultural or social identity, including, unique device or browser identifiers, names, addresses, telephone numbers, email addresses, social security numbers, or account information, and (b) is defined as "personally identifiable information" (PII), "personal information," "personal data," or other similar term (as applicable), within the meaning of any Privacy Laws in effect prior to, or as of, the Closing.

"***Petition Date***" means September 10, 2025.

"***Prepetition County Taxes***" means those real property taxes owing to Tooele County, Utah for the years 2020 through 2024.

"***Prepetition Loan Documents***" has the meaning set forth in the Financing Orders.

"***Privacy Laws***" means any and all Applicable Laws, legal requirements, and binding self-regulatory guidelines relating to the receipt, collection, compilation, use, storage, processing, sharing, safeguarding, security (both technical and physical), disposal, destruction, disclosure or transfer (including cross-border) of Personal Information, including Section 5 of the Federal Trade Commission Act, California Consumer Privacy Act, Gramm-Leach-Bliley Act, Payment Card Industry Data Security Standard, EU General Data Protection Regulation, and any and all Applicable Laws relating to breach notification or marketing in connection with Personal Information.

"***Property Taxes***" means ad valorem, property, excise or similar Taxes (including any interest, fine, penalty or additions to tax imposed by any Governmental Authority in connection with such Taxes) based upon the acquisition, operation or ownership of the Purchased Assets but excluding, for the avoidance of doubt, Income Taxes and Transfer Taxes.

"***Purchase Price***" has the meaning set forth in Section 2.5.

"***Purchased Assets***" has the meaning set forth in Section 2.1.

"***Purchaser***" has the meaning set forth in the preamble.

"***Ratification Agreement***" means that certain Ratification and Amendment Agreement dated as of September 12, 2025 by and among Borrower and Lender.

"***Receivership Action***" means that certain lawsuit filed in the Receivership Court styled *Utah Division of Forestry, Fire and State Lands v. US Magnesium LLC*, at Case No. 240909983.

"***Receivership Court***" means the Third Judicial District Court, Salt Lake County, State of Utah.

"***Related to the Business***" means related to, owned, leased, licensed, used, or held for use or in consignment, in connection with the Business as conducted by Seller prior to the Closing.

"***Release***" means any release, spill, emission, discharge, leaking, pumping, injection, deposit, placing, disposal, dispersal, leaching or migration into the environment (including ambient air, surface water, groundwater and surface or subsurface strata) or into or out of any property, including the movement of any Hazardous Material through or in the air, vapor, soil, surface water, groundwater or property.

"***RENCO Global Loan Agreement***" means that certain Subordinated Loan Agreement, dated as of June 26, 2023 by and between Seller, as borrower, and Renco Global Capital, Inc., as lender.

"***RENCO Global Obligations***" means the outstanding indebtedness as of the Petition Date in an aggregate amount equal to $45,920,448 due under the Renco Global Loan Agreement, together with any and all interest, fees and expenses accrued or accruing thereon from and after the Petition Date through and including the Closing Date, in each case to the extent not discharged in the Bankruptcy Case or otherwise satisfied.

"***Sale Hearing***" has the meaning set forth in the Bidding Procedures Order.

"***Sale Order***" means an Order of the Bankruptcy Court, in form and substance acceptable to Purchaser in its sole discretion, which, among other things: (a) approves, pursuant to sections 105, 363, and 365 of the Bankruptcy Code, (i) the execution and delivery by Seller of this Agreement, (ii) the performance by Seller of their obligations under this Agreement, and (iii) the sale of the Purchased Assets from Seller to Purchaser free and clear of all Liens other than Permitted Liens on the terms set forth herein; (b) authorizes Seller to assume and assign to Purchaser the Assumed Contracts; (c) finds that Purchaser is not a successor to Seller or any of its Affiliates or subsidiaries; and (d) finds that Purchaser is a "good faith" buyer within the meaning of section 363(m) of the Bankruptcy Code and grants Purchaser the full protections provided thereby.

"***Scheduled Employees***" means each current Employee (including each current Employee on leave of absence) identified on Schedule 1.1(d). Such schedule shall include the following information for each such employee: employer; name or employee ID; date of hire; job title or position; current compensation paid or payable; status as exempt or non-exempt under the Fair Labor Standards Act of 1938, as amended; current base salary or rate of pay; bonus compensation (if any) paid or payable for calendar year 2024 and for the eight months ended August 31, 2025; leave status and all accrued and unpaid vacation, holidays, sick pay and other paid time-off (whether accrued prior to or during the Bankruptcy Cases) to which the Employee is entitled with respect to all periods of service up to and including the Closing Date under the policies and practices of Sellers or their respective Affiliates.

"***Selected Employees***" has the meaning set forth in Section 5.5(a).

"***Seller***" has the meaning set forth in the preamble.

"***Seller Pension Plan***" means together, the US Magnesium, LLC Salaried Pension and 401(k) Plan and the US Magnesium, LLC Hourly Pension and 401(k) Plan.

"***Skull Valley***" means Skull Valley Water Group, LLC, a Utah limited liability company, and its successors and assigns.

"***Skull Valley Joint Venture***" means the business and assets of the joint venture owned by Skull Valley, including all right, title, and interest of Skull Valley to own and operate the water delivery system located in Tooele County, Utah, including all water rights, machinery, equipment, and other property set forth in the agreements, documents, and instruments providing for the Skull Valley Joint Venture.

"***Subsidiary***" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity (a) of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or (b) the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person and, in the case of this clause (b), which is treated as a consolidated subsidiary for accounting purposes.

"***Successful Bidder***" has the meaning set forth in the Bidding Procedures Order.

"***Tax***" (and, with correlative meaning, "***Taxes***," "***Taxable***," and "***Taxing***") means (a) any net income, capital gains, gross income, gross receipts, sales, use, transfer, ad valorem, franchise, profits, license, capital, withholding, payroll, estimated, employment, excise, goods and services, severance, stamp, occupation, premium, property, social security, environmental (including Code section 59A), alternative or add-on, value added, registration, windfall profits or other taxes, duties, charges, fees, levies or other assessments imposed by any Governmental Authority, or any interest, penalties, or additions to tax incurred under Applicable Laws with respect to taxes; and (b) any liability in respect of any item described in clause (a) above that arises by reason of a contract, assumption, transferee or successor liability, operation of law (including by reason of participation in a consolidated, combined or unitary Tax Return) or otherwise.

"***Tax Returns***" means any report, return (including any information return), declaration or other filing required or permitted to be supplied to any taxing authority or jurisdiction with respect to Taxes, including any amendments or attachments to such reports, returns, declarations or other filings.

"***Termination Date***" has the meaning set forth in Section 8.1(b).

"***Title Company***" means a nationally recognized title insurance company designated by Purchaser.

"***Tranche A DIP Term Loans***" has the meaning given to it in the Ratification Agreement.

"***Tranche B DIP Term Loans***" has the meaning given to it in the Ratification Agreement.

"***Transaction Documents***" means this Agreement and all other ancillary agreements, documents, certificate, or instruments to be entered into by, or documentation delivered by, any Party pursuant to this Agreement.

"***Transfer Taxes***" has the meaning set forth in Section 5.8(a).

"***Transferred Employees***" has the meaning set forth in Section 5.5(a).

"***Transferred Pension Liability***" has the meaning set forth in Section 5.5(d).

"***Transferred Pension Assets***" has the meaning set forth in Section 5.5(d).

"***Transferred Permit***" has the meaning set forth in Section 2.1(l).

"***Wells***" means Wells Fargo Bank, National Association.

"***Wells Credit Agreement***" means the "Loan Agreement" as such term is defined in the Ratification Agreement.

"***Wells Fargo Obligations***" means the outstanding indebtedness under the Wells Revolving Loans in an aggregate amount of $40,541,903.55 as of September 9, 2025, together with any and all interest, fees and expenses accrued or accruing thereon from and thereafter through and including the Closing Date, plus all outstanding indebtedness due under the Tranche A DIP Term Loans, in each case to the extent not discharged in the Bankruptcy Case or otherwise satisfied.

"***Wells Revolving Loans***" means those certain "Revolving Loans" as such term is defined in the Wells Credit Agreement.

"***Wells Term Loan C Participation Amount***" means all amounts due as of the Petition Date under that certain "Term Loan C Note" as such term is defined in the Wells Credit Agreement, in the principal amount of $25,000,000, together with any and all interest, fees and expenses accrued or accruing thereon from and after the Petition Date through and including the Closing Date, in each case to the extent not discharged in the Bankruptcy Case or otherwise satisfied.

ARTICLE II
PURCHASE AND SALE; CLOSING

2.1 **Purchase and Sale**. Pursuant to sections 105, 363, and 365 of the Bankruptcy Code, on the terms and subject to the conditions set forth in this Agreement (including entry of the Sale Order), at the Closing, Seller shall sell, convey, transfer, assign and deliver to Purchaser, and Purchaser shall purchase and accept from Seller, all of Seller's right, good title, and interest in and to all of the assets of Seller, other than the Excluded Assets, to the extent such assets exist as of the Closing Date, wherever located, including, without limitation, the following assets (the "***Purchased Assets***"), in each case free and clear of all Liens to the extent provided in the Sale Order (other than Permitted Post-Closing Encumbrances):

(a) Accounts Receivable;

(b) Inventory;

(c) Owned Real Property;

(d) Fixtures and Equipment, including IT Equipment, including but not limited to those identified on Schedule 2.1(d);

(e) Intellectual Property, including but not limited to the Intellectual Property identified on Schedule 2.1(e);

(f) each Contract listed on Schedule 2.1(f), (such Contracts, collectively, the "***Assumed Contracts***");

(g) all leasehold rights in personal property leased by Seller and used or held for use primarily in connection with the Business;

(h) all of Seller's rights under confidentiality or non-disclosure agreements with respect to confidential treatment of information Related to the Business or the Purchased Assets and with respect to solicitation and hiring of Scheduled Employees;

(i) all of Seller's books and records, and the corporate charter, seal, minute books, stock record books and other similar documents, including all personnel records (including all human resources and other records) relating to the Transferred Employees;

(j) all Claims and Actions, other than Avoidance Actions, owned by or available to Seller (i) Related to the Business or related to the Purchased Assets, the Assumed Liabilities, or the acquisition, ownership, management, operation, use, function, or value of the Business or any Purchased Asset; (ii) against any counterparty to an Assumed Contract, or any Affiliate of such counterparty; or (iii) against any current or former director, officer, manager, Employee, contractor, consultant or advisor employed by or providing services to Seller to the extent Related to the Business (such actions, the "***Assigned Actions***");

(k) all Permits (including Environmental Permits), and all pending applications therefor, in each case, to the extent Related to the Business and necessary for the current operation and conduct of the Business and Purchased Assets (the "***Transferred Permits***");

(l) All of Seller's right, title, and interests in and to the Skull Valley Joint Venture; provided, however, to the extent such rights, title, and interests cannot be transferred or assigned effectively without the consent of third parties, which consent has not been obtained prior to the Closing (after giving effect to the Sale Order and the Bankruptcy Code), Seller shall, subject to any approval of the Bankruptcy Court that may be required, promptly cooperate with Purchaser in any lawful and commercially reasonable arrangement under which Purchaser would, to the extent practicable, obtain the economic claims, rights and benefits under such asset and assume the economic burdens and obligations with respect thereto in accordance with this Agreement;

(m)

(n) Transferred Pension Assets;

(o) all credits, prepaid expenses, prepayments, deferred charges, advance payments, refunds, customer deposits and security deposits, prepaid items and duties, customer or vendor rebates, credits or other refunds, earnest deposits, bid, performance, lease, utility and other deposits, and all other forms of deposit or security placed by Seller for the performance of an Assumed Contract, in each case, to the extent Related to the Business or related to a Purchased Asset;

(p) any claim, interest, right, award, recovery, indemnity, warranty, right to insurance proceeds, rebate, right of set off, refund, reimbursement, audit right, duty, obligation, liability or other intangible right in favor of or owed to Seller (other than rights arising under or relating to this Agreement and the other Transaction Documents), to the extent (i) related to any Assigned Action, (ii) related to any other Purchased Asset, any Assumed Liability, or the Business, or (iii) related to any insurance proceeds as set forth in Section 5.12;

(q) all of Seller's rights under invention, intellectual property assignment, non-competition, non-solicitation of customers and Employees, and non-disparagement agreements, with current and former Employees and agents of Seller or third party to the extent related to the Purchased Assets (or any portion thereof) or with the Transferred Employees;

(r) all customer and supplier lists Related to the Business and all telephone and telephone facsimile numbers and other directory listings of the Business;

(s) all goodwill, customer and referral relationships, other intangible property, and all privileges and rights of set-off, in each case, Related to the Business or to the extent attributable to the Purchased Assets or the Assumed Liabilities;

(t) all rights of Seller under or pursuant to all warranties, representations and guarantees made by suppliers, manufacturers, and contractors to Seller to the extent related to the Purchased Assets;

(u) any refund of any Taxes paid by or allocable to Seller other than any refund of Taxes that are Excluded Liabilities;

(v) all rights of any nature, including any recoveries and any claims, rights, causes of action or proceeds from any current and historical primary, excess and umbrella policies, self-insurance and captive insurance company arrangements, casualty, workers' compensation, general liability and auto liability insurance policies;

(w) prepaid expenses of Seller and any of their respective Affiliates to the extent attributable to a Purchased Asset or otherwise Related to the Business;

(x) all rights of Seller in and to any of the "EPA Special Accounts," as such term is defined in the Consent Decree;

(y) other than any Excluded Asset, all right, title, and interest of Seller in, for or under the Business and other assets, properties or rights of every kind and description, wherever located, whether real, personal, or mixed, tangible or intangible, Related to the Business, whether owned, leased, licensed, used, occupied, or held for use by Seller;

(z) the Ace Commercial Tort Claim;

(aa) Claims and Actions of Seller, including Avoidance Actions, against The Renco Group, Inc. and/or its Affiliates; and

(bb) all proceeds and products of any and all of the foregoing Purchased Assets.

2.2 **Excluded Assets**. Notwithstanding anything to the contrary contained in Section 2.1 above or any other provision of this Agreement or any Transaction Document, the following assets are not being sold, assigned, transferred, or conveyed to Purchaser by Seller hereunder (collectively, the "***Excluded Assets***"):

(a) all Cash and Cash Equivalents, security entitlements, securities accounts, commodity contracts and commodity account and including any cash collateral that is collateralizing any letters of credit or insurance policies;

(b) Avoidance Actions (other than Avoidance Actions against The Renco Group, Inc. and/or its Affiliates);

(c) the Cash Consideration;

(d) data files, archive files, systems documentation, and other data processing information and records relating solely to any of the Excluded Assets;

(e) all insurance policies;

(f) all Contracts (other than Assumed Contracts) (the "***Excluded Contracts***");

(g) all current and prior directors' and officers' liability insurance policies maintained by Seller and all rights of any nature with respect thereto, including all insurance recoveries thereunder and rights to assert claims with respect to any such insurance recoveries;

(h) the rights which accrue or will accrue to Seller under this Agreement and the Transaction Documents;

(i) any rights, claims, or causes of action to the extent related to Excluded Assets described herein;

(j) any tangible or intangible asset held by Seller pursuant to a lease, license, contract, or other agreement where such lease, license, contract, or other agreement is an Excluded Contract;

(k) all securities, whether capital stock or debt, of Seller, other than those set forth on Schedule 2.1(l);

(l) all Personal Information that Seller is prohibited by Applicable Law, including applicable Privacy Laws, or by any of Seller's public-facing policies, notices or other disclosures from delivering or transferring to Purchaser;

(m) all personnel records (including all human resources and other records) of Employees who are not Transferred Employees;

(n) all open purchase orders for goods and services with customers of the Business outstanding as of the Closing;

(o) all open orders for goods and services with suppliers of the Business that remain unfulfilled as of the Closing;

(p) any Benefit Plan other than Seller Pension Plan and any trusts, funding vehicles, insurance policies, administrative services agreements, files and records, and other assets, related thereto (other than with respect to the Seller Pension Plan);

(q) documents that (i) Seller is required by Applicable Law to retain, (ii) if transferred would violate any Applicable Laws (including with respect to privacy), or (iii) are subject to any attorney-client, work product or similar privilege with respect to work performed in anticipation of or in connection with the preparation or administration of the Bankruptcy Case, this Agreement or the transactions contemplated by this Agreement;

(r) any assets, properties and rights described or set forth on Schedule 2.2(r); and

(s) any bank accounts Related to the Business.

2.3 **Assumed Liabilities**. On the terms and conditions contained in this Agreement, Purchaser shall, after the Closing, assume and be liable and responsible for paying and satisfying, solely and only the following Liabilities, all items not set forth below in this Section 2.3 being excluded (all Liabilities so assumed, the "***Assumed Liabilities***"):

(a) the Wells Fargo Obligations;

(b) all Liabilities exclusively arising in connection with or from the use of the Purchased Assets or operation of the Business after the Closing;

(c) all Liabilities under the Assumed Contracts, in each case to the extent arising out of any event, fact, act, omission, or condition occurring after the Closing and excluding any Liabilities arising from or relating to any breaches under such Assumed Contracts prior to the Closing;

(d) all Liabilities assumed by Purchaser pursuant to Section 5.5, in each case to the extent arising out of any event, fact, act, omission, or condition occurring after the Closing;

(e) all Liabilities related to the Assigned Actions to the extent arising out of any event, fact, act, omission, or condition occurring after the Closing;

(f) all Cure Costs payable pursuant to Section 2.7(a);

(g) Liabilities for accrued and unpaid vacation, holidays, sick pay and other paid time-off for the Transferred Employees (the "***Assumed PTO***");

(h) Transferred Pension Liabilities;

(i) all Liabilities under any Transferred Permit to the extent arising out of any event, fact, act, omission, or condition occurring after the Closing;

(j) all Liabilities for Taxes imposed on or with respect to the Purchased Assets or the Business that are attributable to any period or portion thereof beginning after the Closing;

(k) all Liabilities for Prepetition County Taxes;

(l) all obligations due and owing under the Consent Decree; and

(m) all other Liabilities identified on Schedule 2.3(m).

2.4 **Excluded Liabilities**. Anything in this Agreement or in any other Transaction Document to the contrary notwithstanding, except for the Assumed Liabilities set forth in Section 2.3, Purchaser shall not assume, be obligated to pay, perform or otherwise discharge or otherwise become responsible for Seller's or any of its respective Affiliates' Liabilities that are not Assumed Liabilities (such excluded Liabilities are collectively referred to herein as the "***Excluded Liabilities***"), and Seller and its Affiliates shall remain fully and solely responsible for all Excluded Liabilities. For the avoidance of doubt, any and all of the following shall constitute Excluded Liabilities:

(a) any Indebtedness of Seller other than the Wells Fargo Obligations;

(b) any Liability to the extent arising out of any Excluded Asset, including the Excluded Contracts;

(c) all Claims or Actions pending on or before the Closing against Seller and all Claims or Actions against or giving rise to liabilities or obligations of the Business or the Purchased Assets based on acts or omissions by Seller prior to the Closing even if instituted after the Closing;

(d) all drafts or checks outstanding at the Closing under which Seller is obligated;

(e) indemnification or advancement of expenses for any current or former officer or director of Seller or any of the Subsidiaries of Seller;

(f) all Liabilities for trade or accounts payable and other obligations of payment to any Person to the extent arising prior to the Closing;

(g) any Liability with respect to any of the current or former Employees arising prior to the Closing, other than the Assumed PTO;

(h) any and all (i) Taxes allocated to, of or imposed on Seller (or any member or Affiliate of Seller), (ii) Taxes imposed on or with respect to the Business or the Purchased Assets that are attributable to any period or portion thereof ending on or prior to the Closing, (iii) Taxes that arise from the consummation of the transactions contemplated by this Agreement, (iv) Transfer Taxes that are the responsibility of Seller pursuant to Section 5.8(a), and (v) any Taxes payable to the extent arising out of or related to the Excluded Assets or with respect to the activities of Seller or any of their respective Affiliates (including divested or discontinued business of Seller or their respective Affiliates);

(i) other than its obligations under the Consent Decree, any Environmental Liability arising out of or relating to (i) the Excluded Assets, (ii) the conduct of the Business or the ownership or operation of the Business and the Purchased Assets, in each case, on or prior to the Closing; (iii) the presence, Release or threat of Release of or exposure to any Hazardous Materials at, on, or under or migrating from any Owned Real Property, Leased Real Property or otherwise with respect to the Purchased Assets, or otherwise arising out of the ownership or operation of, the Business, in each case, arising on or prior to the Closing; (iv) the transportation, storage, treatment, disposal, generation, manufacturing, recycling, reclamation, use or other handling of any Hazardous Materials with respect to the Purchased Assets, or relating in any manner to the ownership or operation of, the Business on or prior to the Closing; (v) the presence, existence or human exposure to asbestos in any form at, on, under or within any Purchased Asset, Owned Real Property, or Leased Real Property occurring, arising or existing on or prior to the Closing; (vi) Liabilities that Seller has assumed by Contract from a third party prior to the Closing that are not a Closing Assumed Contract; (vii) any Contract that is not an Assumed Contract; (viii) any violations of Environmental Law to the extent such violations occurred prior to the Closing regardless of whether those violations continue on or past the Closing; or (ix) the matters set forth on Schedule 2.4(i);

(j) all Liabilities relating to (i) the collection, storage, transmission, use or disposal of any Personal Information of any third party, in each case, on or before the Closing, and (ii) the transfer of any such Personal Information to Purchaser to the extent permitted under this Agreement;

(k) all Liabilities, including any Claims or Actions, with respect to current or former Employees (or their representatives or beneficiaries) or employees of any ERISA Affiliate, or any officers, directors, retirees, independent contractors, consultants or job applicants of Seller or any ERISA Affiliate, for any action or inaction of Seller (or any predecessor of Seller) occurring on or prior to the Closing, including with respect to any Benefit Plan, severance, vacation, payroll, sick leave, unemployment benefits, retirement benefits, pension benefits, Employee stock options, equity compensation, Employee stock purchases, or profit sharing plans, health care and other welfare plans or benefits, or any other Employee plans or arrangements or benefits or other compensation of any kind to any Employee, officer, director, retiree, independent contractor, consultant or job applicant, including under any benefit plans, programs and arrangements of an ERISA Affiliate;

(l) any payment obligation or liability, contingent or otherwise, for brokerage or finders' fees or similar payment in connection with this Agreement (including all Allowed Professional Fees and all amounts necessary to wind down the Seller's bankruptcy estate);

(m) all Liabilities relating to, arising from or with respect to the failure to comply with any bulk sales laws;

(n) all Liabilities relating to, arising from or with respect to any worker's compensation claims and any other occurrence-based claim to the extent arising out of any event, fact, act, omission, or condition occurring prior to the Closing, irrespective of when such Liabilities arise;

(o) all Liabilities of Seller under or arising out of the Transaction Documents and all Liabilities for which Seller or any of their respective Affiliates are expressly made responsible pursuant to this Agreement or any other Transaction Document;

(p) subject to Section 2.4(h), all Liabilities relating to, arising from or with respect to, the conduct of the Business or to the Purchased Assets (and the use thereof) arising or accruing at any time at or prior to the Closing;

(q) all Liabilities that existed, arose, or were incurred (i) prior to the Petition Date unless assumed in Section 2.3, or (ii) subsequent to the Petition Date and prior to the Closing Date, unless expressly assumed herein, including in each case of (i) and (ii) Liabilities that are dischargeable in the Bankruptcy Case; and

(r) any other Liability of any kind, whether known or unknown, contingent or noncontingent, matured or otherwise, whether currently existing or hereinafter created, other than an Assumed Liability.

2.5 **Purchase Price**

(a) The aggregate purchase price for the purchase, sale, assignment and conveyance of Seller's respective right, title and interest in, to and under the Purchased Assets will consist of the following (collectively, the "***Purchase Price***"):

(i) an amount in cash equal to the Cash Consideration;

(ii) the assumption of the Wells Fargo Obligations;

(iii) the assumption of the Renco Global Obligations;

(iv) the assumption of the Bridge Loan Agreement Obligations;

(v) the Credit Bid Amount;

(vi) the aggregate amount of the Cure Costs payable pursuant to Section 2.7(a);

(vii) the assumption of all other Assumed Liabilities;

(b) In accordance with the foregoing, Purchaser shall (i) deliver, or cause to be delivered, to (1) Seller an aggregate amount in cash equal to the Cash Consideration (the "***Closing Date Payment***") and (2) as promptly as practicable following the Closing, the applicable Cure Costs to the respective non-Seller counterparties to the Assumed Contracts (collectively, the "***Cure Payments***"); and (ii) satisfy the Purchase Price at the Closing as to the Credit Bid Amount by discharging Seller, and Seller shall be deemed discharged, from the obligations under the Wells Credit Agreement in an aggregate amount equal to the Credit Bid Amount (for the avoidance of doubt, any Lien and security interest under the Wells Credit Agreement on any encumbered asset that is not a Purchased Asset shall not be released and will continue to secure the remaining outstanding obligations under the Wells Credit Agreement). The Closing Date Payment and any payment required to be made pursuant to any other provision hereof shall be made in cash by wire transfer of immediately available funds to such bank account as shall be designated in writing by the applicable Party to (or for the benefit of) whom such payment is to be made, and such designation shall be made, at least two (2) Business Days prior to the date such payment is to be made.

2.6 **Purchase Price Allocation**. Within ninety (90) days after the Closing Date, Purchaser will prepare or cause to be prepared and delivered to Seller an allocation of the Purchase Price (and any other items constituting consideration for Tax purposes) among the Purchased Assets in accordance with Section 1060 of the Code and the Treasury Regulations thereunder. Seller and Purchaser shall cooperate in good faith to finalize a mutually agreeable Internal Revenue Service Form 8594 allocation within thirty (30) days after the delivery of the allocation by Purchaser to Seller.

2.7 **Assumption and Assignment of Contracts**.

(a) Seller shall transfer and assign all Assumed Contracts to the Purchaser, and Purchaser shall assume all Assumed Contracts from Seller as of the Closing Date pursuant to section 365 of the Bankruptcy Code and the Sale Order. In connection with such assumption and assignment, Purchaser shall pay all Cure Costs due under such Assumed Contracts to the extent required under section 365(b) of the Bankruptcy Code. For the avoidance of doubt, the Purchaser shall pay all Cure Costs following the Closing in the Ordinary Course of Business, and Purchaser shall not be responsible for curing any non-monetary defaults under any Assumed Contract. The Cure Costs for each Assumed Contract as of the date hereof are set forth opposite the name of such Assumed Contract set forth on Schedule 2.7(a). Seller shall provide an updated Schedule 2.7(a) containing any necessary updates to the Cure Costs no later than five (5) days prior to the Sale Hearing.

(b) In the case of licenses, certificates, approvals, authorizations, leases, Contracts, and other commitments included in the Purchased Assets that cannot be transferred or assigned effectively without the consent of third parties, which consent has not been obtained prior to the Closing (after giving effect to the Sale Order and the Bankruptcy Code), Seller shall, subject to any approval of the Bankruptcy Court that may be required, promptly cooperate with Purchaser in any lawful and commercially reasonable arrangement under which Purchaser would, to the extent practicable, obtain the economic claims, rights and benefits under such asset and assume the economic burdens and obligations with respect thereto in accordance with this Agreement, including by subcontracting, sublicensing or subleasing to Purchaser, and this Agreement shall not operate as an assignment thereof in violation of any such license, certificate, approval, authorization, lease, Contract or other commitment.

2.8 **Closing**.

(a) The Closing shall take place remotely, via electronic exchange of documents, at 10:00 a.m., prevailing Eastern time, on the date that is three (3) Business Days after the satisfaction or waiver of the conditions precedent set forth in Articles VI and VII (other than those conditions that by their terms are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions) or on such other date, and at such time and place, as may be agreed by Purchaser and Seller. The date on which the Closing occurs in accordance with the preceding sentence is referred to in this Agreement as the "***Closing Date***."

(b) At the Closing, Seller shall deliver counterparts of the following to Purchaser:

(i) a bill of sale and assignment and assumption agreement in the form attached hereto as Exhibit 2.8(b)(i) (the "***Bill of Sale, Assignment and Assumption Agreement***") duly executed by Seller;

(ii) an assignment of Intellectual Property in the form attached hereto as Exhibit 2.8(b)(ii) (the "***IP Assignment***") duly executed by Seller;

(iii) a certificate from Seller signed by an authorized officer of Seller on behalf of Seller, dated as of the Closing Date, certifying as to the satisfaction of the conditions set forth in Sections 6.1, 6.2, and 6.9 hereof;

(iv) with respect to each parcel of Owned Real Property, (1) a duly executed special warranty deed (or the local equivalent thereof), in form and substance as required by local Law or custom so that such deed will be in recordable form, conveying the fee estate in such Owned Real Property to Purchaser (the "***Deed***"), and (2) any additional documents, instruments and/or agreements, each in form and substance reasonably satisfactory to Seller and Purchaser, which are required by local Law to be, or are customarily, filed and/or recorded with the Deed in the applicable local jurisdiction, including those certain documents, instruments, and/or agreements set forth on Schedule 2.8(b)(v);

(v) with respect to each Assumed Contract constituting a real property lease, an assignment and assumption agreement conveying such real property lease to Purchaser, in each case in customary form reasonably approved by Purchaser (each, a "***Lease Assignment Agreement***"), duly executed by Seller;

(vi) a certificate of the Secretary or an Assistant Secretary of Seller certifying as to the incumbency and signatures of the executing officers of Seller;

(vii) duly executed counterparts to each other Transaction Document;

(viii) from Seller (or if Seller is disregarded for U.S. federal income tax purposes, its regarded owner), an IRS Form W-9 with respect to Seller, duly completed and executed;

(ix) all personnel records relating to the Transferred Employees; *provided*, that the delivery obligations of Seller hereunder shall be deemed satisfied if such personnel records remain at the Facility;

(x) such other instruments and documents as may be reasonably requested by Purchaser at least five (5) Business Days prior to Closing in order to consummate the transactions contemplated under this Agreement.

(c) At the Closing, Purchaser shall deliver the following to Seller:

(i) payment of the Closing Date Payment pursuant to Section 2.5;

(ii) duly executed counterpart of the Bill of Sale, Assignment and Assumption Agreement;

(iii) duly executed counterpart of the IP Assignment;

(iv) duly executed counterpart of the Lease Assignment Agreement;

(v) duly executed counterparts of each other Transaction Document;

(vi) a certificate of Purchaser, dated as of the Closing Date, as to the satisfaction of the conditions set forth in Sections 7.1 and 7.2;

(vii) such other instruments and documents as may be reasonably requested by Seller at least five (5) Business Days prior to Closing in order to consummate the transactions contemplated under this Agreement.

2.9 **Withholding**. Purchaser shall be entitled to deduct and withhold from amounts payable pursuant to this Agreement any amounts required to be deducted and withheld under the Code or any provision of any U.S. federal, state, local, or foreign Tax Law. Prior to withholding any amount, Purchaser shall use commercially reasonable efforts to provide written notice to Seller to whom such amounts would otherwise have been paid, together with reasonably sufficient details regarding the relevant withholding Law. To the extent that amounts are so deducted and withheld and properly remitted to the appropriate Governmental Authority, such deducted and withheld amounts shall be treated for all purposes of this Agreement as having been paid to the applicable Seller. The Parties shall cooperate and use their commercially reasonable efforts to obtain any available reduction to or exemption from any such withholding requirement.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Purchaser, as of the date hereof and as of the Closing Date, as follows:

3.1 **Due Incorporation; Good Standing**. Seller is duly organized, validly existing and in good standing under the Laws of its jurisdiction of organization. Seller has all requisite limited liability company or similar power and authority to own, lease and operate its properties and assets and to carry on the Business as presently conducted, and is qualified to do business and, to the extent such concept applies, is in good standing as a foreign legal entity in each jurisdiction where the ownership, leasing or operation of its assets or properties or conduct of the Business requires such qualification, except where the failure to be so qualified or in good standing, or to have such power or authority, would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

3.2 **Due Authorization**. Subject to entry of the Sale Order, (a) Seller has all necessary power and authority to execute and deliver this Agreement and the other Transaction Documents to which Seller is a party and to perform its obligations hereunder and to consummate the transactions contemplated hereby and thereby; (b) the execution, delivery, and performance by Seller of this Agreement and the other Transaction Documents to which Seller is a party, and the consummation by Seller of the transactions contemplated hereby and thereby, have been duly authorized by all requisite limited liability company action on behalf of Seller and no other organizational proceedings on Seller's part are necessary to authorize the execution, delivery, and performance by Seller of this Agreement or the other Transaction Documents and the consummation by it of the transactions contemplated hereby and hereby; and (c) this Agreement and the other Transaction Documents to which Seller is a party have been, or will be, duly executed and delivered by Seller and, assuming the authorization, execution, and delivery thereof by Purchaser and Seller, as applicable, constitutes, or will constitute, legal, valid, and binding obligations of Seller, enforceable against Seller in accordance with its and their terms, except that such enforceability (i) may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium, and other similar Laws of general application affecting or relating to the enforcement of creditors' rights generally; and (ii) is subject to general principles of equity, whether considered in a proceeding at law or in equity (clauses (c)(i) and (ii), collectively, the "***Enforceability Exceptions***").

3.3 **Compliance With Laws**. Seller is in material compliance with all Applicable Laws and the Business is in material compliance with all Applicable Laws. Seller has not received any written notice of (i) any investigation or review by any Governmental Authority with respect to the Business or the Purchased Assets, or (ii) any material noncompliance with any Applicable Laws which noncompliance has not been cured. Seller has obtained and is in material compliance with all Permits and Orders issued or granted by a Governmental Authority necessary to conduct its Business as presently conducted, except those the absence of which to have or be in compliance with would not, individually or in the aggregate, reasonably be expected to be material.

3.4 **Title to Assets; Sufficiency of Assets; Condition of Assets**. Seller has good and valid legal and beneficial title to, or a valid, binding and enforceable leasehold interest in, as applicable, all of the Purchased Assets, and such Purchased Assets are not subject to any Liens (other than (x) as of the date hereof, Permitted Liens, and (y) as of the Closing Date, Permitted Post-Closing Encumbrances). At the Closing, Purchaser will receive good and valid title to, or in the case of leased assets, good and valid leasehold interests in, the Purchased Assets, free and clear of all Liens (other than Permitted Post-Closing Encumbrances), to the fullest extent permissible under Applicable Law, including section 363(f) of the Bankruptcy Code. The Purchased Assets constitute all of the tangible and intangible assets, rights and properties that are used or held for use by Seller or any of their respective Affiliates in connection with the Business. Notwithstanding the foregoing, Purchaser expressly acknowledges that the State of Utah is disputing the legal status of the mineral lease and other permits and agreements by and among the State of Utah and Seller, and that the Seller's representations in this Section 3.4 are made subject to the foregoing disclosure.

3.5 **Pension Plan**. The Seller Pension Plan is the sole defined benefit pension plan maintained, contributed to, or required to be contributed to by Seller or any of its Affiliates that is subject to Title IV of ERISA. The Seller Pension Plan has, since its inception, been maintained, funded and administered in material compliance with its terms and with the applicable provisions of ERISA, the Code and all other applicable Laws. All required contributions, premiums, and other payments (including PBGC premiums) with respect to the Seller Pension Plan have been timely made, and there is no unpaid minimum funding obligation under ERISA or the Code as of the date hereof. Neither Seller nor any ERISA Affiliate has incurred any liability under Title IV of ERISA with respect to the Seller Pension Plan that has not been satisfied in full, and no event has occurred that would give rise to any such Liability. There are no audits, investigations, actions, claims, suits or proceedings pending, or threatened by the Internal Revenue Service, Department of Labor, the PBGC, any plan participant or any other Person with respect to the Seller Pension Plan. Neither Seller nor any ERISA Affiliate has any liability with respect to any defined benefit pension plan (other than the Seller Pension Plan) that is or was subject to Title IV of ERISA and that has been terminated, or with respect to which Seller has incurred withdrawal liability, which remains unsatisfied.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to Seller as of the date hereof and as of the Closing, as follows:

4.1 **Due Organization**. Purchaser is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware with all requisite power and authority to own and operate its assets and properties as they are now being owned and operated.

4.2 **Due Authorization**. Purchaser has full power and authority to enter into this Agreement and its Transaction Documents and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by Purchaser of this Agreement and its Transaction Documents have been duly authorized by all necessary entity action of Purchaser. Purchaser has duly and validly executed and delivered this Agreement and has duly and validly executed and delivered (or prior to or at the Closing will duly and validly execute and deliver) its Transaction Documents. This Agreement constitutes the legal, valid and binding obligation of Purchaser, and its Transaction Documents, upon execution and delivery by Purchaser, will constitute legal, valid and binding obligations of Purchaser enforceable in accordance with their respective terms, subject to the Enforceability Exceptions.

ARTICLE V
COVENANTS

5.1 **Access to Information and the Facility**. From the date of this Agreement to the earlier of the Closing Date or the date this Agreement is terminated, Seller shall give Purchaser and its representatives, upon reasonable advance written notice, reasonable access during normal business hours to the offices, the Facility, the Purchased Assets, the Employees, and books and records of or Related to the Business (including financial, operating, and other data and information related to the Purchased Assets and the Assumed Liabilities), and shall make the officers and Employees of Seller available to Purchaser and its representatives as Purchaser and its representatives shall from time to time reasonably request, in each case to the extent that such access and disclosure would not obligate Seller to take any actions that would unreasonably disrupt the normal course of the Business or violate the terms of any contract to which Seller is bound or any Applicable Law.

5.2 **Interim Operations of the Business**. Except (i)(1) as required by Applicable Law, (2) as required by the Ratification Agreement or the Prepetition Loan Documents (to the extent then in effect), or (3) as authorized by any Order of the Bankruptcy Court, which Order is consistent with this Agreement, (ii) as otherwise expressly contemplated by this Agreement, (iii) with the prior written consent of Purchaser, or (iv) as set forth on Schedule 5.2, during the period from the date of this Agreement until the earlier of the Closing Date or the date this Agreement is terminated, Seller will: (A) conduct the Business in the Ordinary Course of Business and maintain and preserve the Purchased Assets in their current condition, ordinary wear and tear excepted; (B) preserve in all material respects the present business operations, organization and goodwill of the Business, and the present relationships with the Employees, customers and vendors of the Business; and (C) maintain their books, accounts, and records in the Ordinary Course of Business.

5.3 **Cooperation**. Subject to the terms and conditions set forth in this Agreement, the Parties shall cooperate with each other and use their respective commercially reasonable efforts to: (i) take or cause to be taken all actions reasonably necessary, proper or advisable on their part under this Agreement or Applicable Law to consummate the transactions contemplated hereby as promptly as reasonably practicable in accordance with the Bidding Procedures; (ii) execute, acknowledge, and deliver in proper form any further documents, certificates, agreements, and other writings, and take such other action as such other Party may reasonably require, in order to effectively carry out the intent of the Transaction Documents.

5.4 **Preservation of Records; Post-Closing Access and Cooperation**.

(a) For a period of six (6) years after the Closing Date or such other period (if longer) required by Applicable Law, Purchaser shall preserve and retain all corporate, accounting, legal, auditing, human resources and other books and records included in the Purchased Assets that are in its possession relating to the Business and the Purchased Assets prior to the Closing Date. Purchaser shall, after the Closing Date, (i) permit Seller and its respective representatives (collectively, the "***Permitted Access Parties***") reasonable access, for the purpose of Seller's tax reporting requirements, financial accounting and compliance with Applicable Law (including with respect to Seller's wind-down and related activities), to the material financial and other books and records included in the Purchased Assets that are in its possession, during regular business hours and upon reasonable advance written notice, which access shall include (1) the right of such Permitted Access Parties to copy, at such Permitted Access Parties' expense, such documents and records as they may reasonably request in furtherance of the purposes described above, and (2) Purchaser's copying and delivering to the relevant Permitted Access Parties such documents or records as they may reasonably request in furtherance of the purposes described above, but only to the extent the applicable Permitted Access Party reimburses Purchaser for the reasonable costs and expenses thereof, and (ii) provide the Permitted Access Parties (at no cost to the Permitted Access Parties) with reasonable access to a representative during regular business hours and upon reasonable advance written notice so that Seller and the other Permitted Access Parties have information necessary for the preparation of Tax Returns, collection of those Accounts Receivable that are Excluded Assets, and other activities in connection with the administration and wind-down of the Bankruptcy Case (including the prosecution or processing of insurance/benefit claims); *provided*, that such access does not unreasonably interfere with Purchaser's operation of the Business and Purchaser shall not be required to provide access for requests unrelated to the Business or the Purchased Assets.

(b) Nothing in this Section 5.4 shall require Purchaser to take any such action if (i) such action (1) could result in a waiver or breach of any attorney-client, attorney work product, or other legally recognized privileges or immunity from disclosure, or (2) would result in the disclosure of any trade secrets of third parties or violate any Applicable Laws related to the exchange of information or any obligation of Purchaser with respect to confidentiality, or (ii) such access or information is requested in relation to disputes involving Purchaser, its equity holders or any of their respective Affiliates or the Business or the Purchased Assets, including disputes arising under this Agreement or any other Transaction Document.

5.5 **Employees and Benefits**.

(a) As of the Closing, Seller shall terminate the employment of all of those Employees identified on Schedule 5.5(a). Schedule 5.5(a) hereto shall be amended from time to time prior to the Closing (i) to delete any individuals who are no longer employed by Seller, or (ii) upon written notice from Purchaser to Seller, to add or remove any other individuals. Purchaser, in cooperation with Seller, shall, at least five (5) Business Days prior to the Closing Date and effective as of the Closing Date, extend a written offer of employment to those Employees selected by Purchaser, in its sole and absolute discretion (the "***Selected Employees***"), at a level and with responsibilities that are substantially commensurate with their employment with Seller and at a wage or salary and bonus opportunity that is substantially comparable to the respective wage or salary and bonus opportunity specified for such Selected Employees on Schedule 5.5(a) and with other benefits substantially comparable to those provided to similarly situated Employees of Purchaser. Those Selected Employees who accept offers of employment with Purchaser and who become Employees of Purchaser as of the Closing Date are referred to as "***Transferred Employees***." Notwithstanding the foregoing, nothing herein will, after the Closing Date, impose on Purchaser any obligation to retain any Transferred Employee in its employment for any amount of time or on any terms and conditions of employment. Purchaser shall assume, honor and be solely responsible for paying, providing and satisfying when due all compensation (including salary, wages, commissions, bonuses, incentive compensation, overtime, premium pay and shift differentials), vacation, personal days, sick pay and other paid time off, benefits and benefit claims, severance and termination pay, notice, and benefits (including any employer Taxes or other payments related thereto), in each case, accruing, incurred or arising as a result of employment or separation from employment with Purchaser after the Closing Date with respect to Transferred Employees. For the avoidance of doubt, all Liabilities arising in respect of periods on or prior to the Closing Date relating to the employment with, termination of employment with, application for employment with or any other employment or labor- related Liabilities, including severance, with respect to any current or former Employee or other service provider of Seller and its Affiliates (excluding any Transferred Employees) shall be retained by Seller and its Affiliates on the Closing Date, and Seller and its Affiliates shall be solely responsible for such Liabilities. All Liabilities arising in respect of periods after the Closing Date relating to the employment with, termination of employment with, application for employment with or any other employment or labor-related Liabilities, including severance, with respect to any Transferred Employee, shall be the obligation of Purchaser.

(b) It is understood and agreed between the Parties that all provisions contained in this Agreement with respect to Benefit Plans or Employee compensation are included for the sole benefit of the respective Parties hereto and do not and shall not create any right in any other Person, including, but not limited to, any Employee, any participant in any benefit or compensation plan or any beneficiary thereof, including any right to any continued employment with Purchaser or compensation or benefits of any nature or kind whatsoever.

(c) To the extent permissible under the Benefit Plans as of the Closing Date, Purchaser shall administer COBRA continuation coverage (other than with respect to flexible spending accounts) for M&A Qualified Beneficiaries (as defined in COBRA) employees of Seller as of the Closing Date that were not made offers of employment by Purchaser in accordance with Section 5.5(a).

(d) As of the Closing Date, Purchaser shall assume all Liabilities for all accrued benefits in respect of the Transferred Employees under the Seller Pension Plan in accordance with applicable Laws and the terms of such Seller Pension Plan (such Liabilities, the "***Transferred Pension Liabilities***"). If any assets with respect to any of the Seller Pension Plan (including, to the extent applicable, any insurance contracts or portions thereof maintained with respect to such plan) that relate to the Transferred Pension Liabilities are required by applicable Law or the terms of such plan to be transferred to Purchaser in connection with the transfer of the Transferred Pension Liabilities, such assets shall be transferred pursuant to applicable Law or the terms of such plan (such assets, the "***Transferred Pension Assets***").

5.6 **Confidentiality**. The Parties acknowledge and agree that from and after the Closing, all non-public information relating to the other Parties, including, in respect of Purchaser, the Business, the Purchased Assets, and the Assumed Liabilities, is valuable and proprietary to the respective Party and its respective Affiliates, including any and all confidential and proprietary information that relates to the actual or anticipated business and/or products, research, or development of the Business, or to any technical data, trade secrets, or know-how, is valuable and proprietary to the respective Party and its respective Affiliates. Each Party agrees that, from and after the Closing, each Party and its representatives will hold in confidence, will not disclose to any Person and will not use any information relating to the other Party and its Affiliates, the Business, the Purchased Assets, or the Assumed Liabilities, except as required by Applicable Law or Order or Bankruptcy Court requirement, or as otherwise becomes available in the public domain other than through any action by any Party in violation of its obligations under this Section 5.6.

5.7 **Public Announcements**. Purchaser and Seller will consult with each other before issuing any press release or otherwise making any public statements or disclosures with respect to the transactions contemplated by this Agreement, including the terms hereof, and no Party shall, without the prior written consent of the other Party, issue any such press release or make any such public statement, except as may be required by Applicable Law.

5.8 **Tax Matters**.

(a) Transfer Taxes. To the extent that any sales, purchase, transfer, stamp, documentary stamp, registration, use or similar taxes (collectively, the "***Transfer Taxes***") are payable by reason of the sale of the Purchased Assets under this Agreement, such Transfer Taxes shall be borne by Purchaser. The Party responsible under Applicable Law shall timely file all Tax Returns related to any Transfer Taxes with the appropriate taxing authority. The Transfer Taxes shall be calculated assuming that no exemption from Transfer Taxes is available under the Bankruptcy Code unless otherwise indicated in the Sale Order. Purchaser and Seller will reasonably cooperate in good faith prior to Closing to determine the amount of Transfer Taxes required to be paid in connection with the transactions contemplated by this Agreement and to minimize, to the extent permissible under Applicable Law, the amount of any Transfer Taxes that might otherwise be imposed in connection with the transactions contemplated by this Agreement, including by soliciting and providing appropriate resale exemption certificates or other evidence acceptable to Purchaser or Seller, as appropriate, of exemption from such Transfer Taxes.

(b) Property Taxes. All Property Taxes levied with respect to the Purchased Assets for any Taxable period falling entirely within the period ending on or before the Closing Date shall be the responsibility of Seller. All Property Taxes levied with respect to the Purchased Assets for any taxable period that includes the Closing Date and ends after the Closing Date, whether imposed or assessed before or after the Closing Date will be prorated based on the number of days in such period that occur on or before the Closing Date, on the one hand, and the number of days in such period that occur after the Closing Date, on the other hand, the amount of such Property Taxes allocable to the portion of the period ending on or before the Closing Date being the responsibility of Seller and the remainder being the responsibility of Purchaser. If the exact amount of any Property Taxes is not known on the Closing Date, such Taxes shall be estimated based upon the best available information at the time of Closing (*i.e.*, the Taxable value currently assigned to the real property). There shall be no re-proration of Property Taxes after Closing. The amount of such Property Taxes allocable to Seller pursuant to this Section 5.8(b) that have not been paid prior to Closing, if any, shall be paid to the appropriate Governmental Authority by Purchaser, but shall result in a reduction of the Cash Consideration in like amount. Purchaser shall be responsible for the preparation and timely filing of any Tax Returns and the payment to the applicable Governmental Authority of all Property Taxes that become due and payable after the Closing Date. Seller shall be responsible for the preparation and timely filing of any Tax Returns and payment to the applicable Governmental Authority of all Property Taxes that become due and payable on or prior to the Closing Date.

(c) Cooperation and Audits. Purchaser and Seller will cooperate fully with each other regarding Tax matters and will make available to the other as reasonably requested all information, records, and documents relating to Taxes with regard to the Purchased Assets and the Transferred Employees 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. Notwithstanding anything in this Section 5.8(c) to the contrary, Seller, Purchaser and their respective Affiliates shall not be required to provide to Seller and its Affiliates or Purchaser and its Affiliates, as the case may be, any records, Tax Returns or any other information related to Taxes, in each case, to the extent such records, Tax Returns, or other information do not relate to the Business, Purchased Assets or the Transferred Employees.

(d) Preparation of Tax Returns and Payment of Taxes.

(i) Seller shall prepare and timely file (i) all Tax Returns with respect to the Purchased Assets and the Business for any Tax period ending on or before the Closing Date (the "***Applicable Seller Prepared Returns***") (and Purchaser shall cooperate with Seller in causing such Tax Returns to be filed) and (ii) all Income Tax Returns of Seller and its Affiliates. Seller shall provide Purchaser with a draft of all Applicable Seller Prepared Returns at least thirty (30) days (or such shorter period of time as is reasonably practicable) prior to the filing of any such Tax Return. Seller shall incorporate any changes reasonably requested by Purchaser with respect to such Tax Returns that are supported at a "more likely than not" (or higher) level of confidence and consistent with past practice. As between Seller and Purchaser, unless such Taxes are an Assumed Liability as set forth in Section 2.3, Purchaser shall not be responsible for paying any Taxes shown on any Tax Return Seller is obligated to file under this Section 5.8(d)(i).

(ii) Except as otherwise provided by Section 5.8(a), Purchaser shall prepare and timely file all Tax Returns with respect to the Purchased Assets and the Business for any Tax period ending after the Closing Date, excluding, for the avoidance of doubt, any Income Tax Returns of Seller. With respect to any Tax period beginning before and ending on or after the Closing Date, Purchaser shall prepare such Tax Returns consistent with past practice unless otherwise required by Applicable Law, and shall provide Seller or their successors in rights, as applicable, with a draft of such Tax Returns at least thirty (30) days prior to the filing of any such Tax Return to the extent Seller or its successor in rights could reasonably be expected to be liable for any such Taxes under this Agreement. Purchaser shall incorporate any changes reasonably requested by Seller with respect to such Tax Returns that are supported at a "more likely than not" (or higher) level of confidence and consistent with past practice. Purchaser shall be responsible for paying any Taxes reflected on any Tax Return that Purchaser is obligated to prepare and file under this Section 5.8(d)(ii) to the extent constituting an Assumed Liability.

5.9 **Use of Names and Marks**. As soon as reasonably practicable after the Closing, but in no event more than thirty (30) Business Days after the Closing, Seller shall cause an amendment to the certificate or articles of incorporation or formation (or any equivalent organizational documents) of Seller to be filed with the appropriate Governmental Authority and shall take all other action necessary to change Seller's legal, registered, assumed, trade and "doing business as" name, as applicable, to a name or names not containing any intellectual property, including any name confusingly similar to the foregoing, and will cause to be filed as soon as practicable after the Closing, in all jurisdictions in which Seller is qualified to do business, any documents necessary to reflect such change in its legal, registered, assumed, trade and "doing business as" name, as applicable, or to terminate its qualification therein. Seller further agree that from and after the Closing, Seller and its respective Affiliates will cease to make any use of all Intellectual Property and any names indicating affiliation with Purchaser, any of its Affiliates, the Business, the Purchased Assets, or the business or activities engaged in by Purchaser or any of its Affiliates, other than to make limited factual statements regarding the historical relationship between Seller and the Business.

5.10 **No Successor Liability**. The Parties hereto agree that the Sale Order shall provide that, to the fullest extent permitted by Applicable Law (including under section 363(f) of the Bankruptcy Code), (a) Purchaser shall not be liable for any Liability or Lien (other than Assumed Liabilities) against Seller or any of their respective predecessors or Affiliates, and (b) Purchaser shall have no successor or vicarious liability of any kind or character whether known or unknown as of the Closing Date, whether now existing or hereafter arising, or whether fixed or contingent, with respect to the Business, the Purchased Assets, or any liabilities of Seller arising prior to the Closing Date.

5.11 **Insurance Matters**.

(a) Seller shall, and shall cause their Affiliates to, assign, to the extent assignable, to Purchaser any and all proceeds owing to Seller under Seller's or any of their respective Affiliates' third-party insurance policies written prior to the Closing in connection with (i) the damage or destruction of any of the Purchased Assets from and after the date of this Agreement and prior to the Closing that is, or would have been but for such damage or destruction, included in the Purchased Assets, or (ii) any Assumed Liability (other than, in the case of this clause (ii), where insurance proceeds are directly or indirectly funded by Seller or any of their respective Affiliates through self-insurance or other similar arrangement). If such proceeds are not assignable, Seller agrees to pay any such proceeds received by them or any of their respective Affiliates to Purchaser promptly upon the receipt thereof.

(b) From and after the Closing Date, Seller agrees that, with respect to acts, omissions, events, or circumstances relating to the Business and the Purchased Assets that occurred or existed on or prior to the Closing, whether known or unknown, and that are covered by the insurance policies, Seller shall (or shall cause its Affiliates to) make claims under such insurance policies on behalf of Purchaser, subject to all of the terms and conditions of such insurance policies and this Agreement. Seller shall take no action following the Closing that may invalidate coverage of the Business or the Purchased Assets under the insurance policies.

5.12 **Title Insurance Policies**. From the date of this Agreement to the earlier of the Closing Date or the date this Agreement is terminated, Seller shall use commercially reasonable efforts to cooperate with Purchaser, at Purchaser's sole expense and at no cost, expense, or liability to Seller, in Purchaser's efforts to obtain any title commitments, title policies (including endorsements thereto), and surveys with respect to the Owned Real Property, including by providing reasonable affidavits and other similar instruments as are reasonably required by the Title Company for the issuance of customary endorsements to such title policies reasonably requested by Purchaser, or for the deletion of any standard or printed exceptions in Purchaser's title insurance policies that are customarily deleted by virtue of a seller delivering such instruments in commercial real estate transactions in the state in which the Owned Real Property which is the subject of such policy is located (including, without limitation, any statements within such affidavits or other similar instruments with respect to any customary factual statements regarding unpaid bills or claims for labor or services performed or materials furnished or delivered to the Owned Real Property during applicable statutory lien periods and contracts for the making of repairs or improvements on the Owned Real Property to the extent reasonably required by the Title Company in order to remove any exceptions, and provide customary coverage, related to mechanics' liens or other similar liens).

5.13 **Refunds and Remittances**. To the extent Seller, on the one hand, and Purchaser on the other hand, receives any payment to which the other Party is entitled, each of Purchaser on the one hand, and Seller, on the other hand, agree to promptly remit the proceeds to the other party, as appropriate. The Parties acknowledge and agree there is no right of offset regarding such payments and a party may not withhold funds received from third parties for the account of the other Party in the event there is a dispute regarding any other issue under this Agreement or any other agreement or document contemplated hereby. The provisions of this Section 5.13 shall not apply with respect to Taxes.

ARTICLE VI
CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASER

The obligations of Purchaser at Closing under this Agreement are subject to the satisfaction (or waiver by Purchaser) of the following conditions precedent on or before the Closing Date:

6.1 **Accuracy of Representations**. The representation and warranties of Seller contained in this Agreement (without giving effect to any materiality limitations, such as "material," "in all material respects," and "Material Adverse Effect" set forth therein) shall be true and correct 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 as of such earlier date, except for any failure of any such representation and warranty to be so true and correct that has not had and would not, individually or in the aggregate, reasonably be likely to have a Material Adverse Effect.

6.2 **Compliance with Agreements and Covenants**. Seller shall have performed and complied in all material respects with all of the covenants, obligations and agreements contained in this Agreement to be performed and complied with by it on or prior to the Closing Date including delivery of the documents referred to in Section 2.8(b).

6.3 **Mineral Lease**. A mineral lease and/or royalty agreement with the State of Utah that addresses, to the reasonable satisfaction of Purchaser, all matters associated with the mining of magnesium and lithium in the State of Utah shall be in full force and effect as of the Closing Date.

6.4 **Consent Decree**. Seller and Purchaser shall have reached agreement with the United States Environmental Protection Agency and the State of Utah, satisfactory to Purchaser in its sole discretion, which agreement shall provide for the following: (i) no work related to process modifications or corrective action under RCRA needs to be undertaken unless and until such work is agreed to by Purchaser and magnesium production is to be restarted at the Facility; (ii) agreement on a reasonable schedule for the completion of the waste pond; and (iii) a framework for releasing funds in the EPA Special Accounts to Purchaser for use in undertaking any work for which such EPA Special Accounts may be applied, and (iv) agreement by the United States that the facility as operated for the production of magnesium and/or lithium with the modifications set forth in the Consent Decree shall be in compliance with RCRA and no further process modifications will be required.

6.5 **Receivership Action Dismissal**. The Receivership Court shall have entered an order dismissing the Receivership Action with prejudice.

6.6 **Water Rights**. A voluntary agreement with the State of Utah regarding water rights, in form and substance satisfactory to Purchaser, shall be in full force and effect as of the Closing Date.

6.7 **No Prohibition**. No law or injunction shall have been adopted, promulgated or entered by any Governmental Authority which prohibits, and no lawsuit or proceeding shall be pending which would be reasonably expected to prohibit, the consummation of the transactions contemplated hereby.

6.8 **Entry of Sale Order**. The Sale Order shall have been entered by the Bankruptcy Court, shall be in full force and effect, shall not have been vacated, reversed, stayed, modified or amended as of the Closing Date, and shall have become final and no longer be subject to (or subject to a pending) appeal, vacatur, reversal or motion for reconsideration.

6.9 **No Material Adverse Effect**. Since the date of this Agreement, no Material Adverse Effect shall have occurred.

Any waiver of a condition by Purchaser shall be effective only if such waiver is stated in writing and signed by Purchaser.

ARTICLE VII
CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLER

The obligations of Seller at Closing under this Agreement are subject to the satisfaction (or waiver in writing by Seller) of the following conditions precedent on or before the Closing Date:

7.1 **Accuracy of Representations**. The representations and warranties of Purchaser contained in this Agreement shall be true and correct 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 as of such earlier date, except for any failure of any such representation and warranty to be so true and correct as would not, individually or in the aggregate, reasonably be expected to adversely affect, materially delay or prevent the ability of Purchaser (a) perform its obligations under this Agreement or any other Transaction Document, or (b) consummate the transactions contemplated by this Agreement or any other Transaction Document.

7.2 **Compliance with Agreements and Covenants**. Purchaser shall have performed and complied in all material respects with all of its covenants, obligations and agreements contained in this Agreement to be performed and complied with by it on or prior to the Closing Date, including delivery of the documents referred to in Section 2.8(c) hereof.

7.3 **No Prohibition**. No law or injunction shall have been adopted, promulgated or entered by any Governmental Authority which prohibits, and no lawsuit or proceeding shall be pending which would be reasonably expected to prohibit, the consummation of the transactions contemplated hereby.

7.4 **Entry of Sale Order**. The Sale Order shall have been entered by the Bankruptcy Court, shall be in full force and effect, shall not have been vacated, reversed, stayed, modified or amended as of the Closing Date, and shall have become final and no longer be subject to (or subject to a pending) appeal, vacatur, reversal or motion for reconsideration.

Any waiver of a condition by Seller shall be effective only if such waiver is stated in writing and signed by Seller; *provided*, *however*, that the consent of Seller to the Closing shall constitute a waiver by Seller of any conditions as to Seller to Closing not satisfied as of the Closing Date.

ARTICLE VIII
TERMINATION

8.1 **Termination**. This Agreement may be terminated at any time on or prior to the Closing Date:

(a) With the mutual written consent of Purchaser and Seller;

(b) By either Purchaser or Seller if the Closing shall not have occurred on or before sixty-five (65) days after the Petition Date (as may be extended pursuant to Section 8.1(j)) (the "***Termination Date***"); *provided*, that the right to terminate this Agreement under this Section 8.1(b) shall not be available to any Party whose failure to fulfill any obligation under this Agreement has been the primary cause of, or materially contributed to, the failure of the Closing to occur on or before the Termination Date;

(c) By Seller, if Purchaser shall have breached or failed to perform any of its representations, warranties, covenants, or other agreements contained in this Agreement, which breach or failure to perform (i) would give rise to the failure of a condition set forth in Section 7.1 or Section 7.2, and (ii) has not been or is incapable of being cured by Purchaser within ten (10) Business Days after its receipt of written notice thereof from Seller;

(d) By Purchaser, if Seller shall have breached or failed to perform any of their representations, warranties, covenants, or other agreements contained in this Agreement, which breach or failure to perform (i) would give rise to the failure of a condition set forth in Section 6.1 or Section 6.2, and (ii) has not been or is incapable of being cured by Seller within ten (10) Business Days after their receipt of written notice thereof from Purchaser;

(e) By Seller, if (i) all of the conditions set forth in Article VI have been satisfied or waived (other than those conditions that by their terms are to be satisfied at the Closing), and (ii) Purchaser fails to proceed with and consummate the Closing within three (3) Business Days after receipt of written notice from Seller that Seller is ready, willing, and able to proceed with and consummate the Closing;

(f) By Purchaser, if (i) all of the conditions set forth in Article VII have been satisfied or waived (other than those conditions that by their terms are to be satisfied at the Closing), and (ii) Seller fails to proceed with and consummate the Closing within five (5) Business Days after receipt of written notice from Purchaser that Purchaser is ready, willing, and able to proceed with and consummate the Closing;

(g) By Purchaser, if (i) Seller files a motion to have the Bankruptcy Court enter an Order (1) dismissing the Bankruptcy Case, or (2) converting the Bankruptcy Case into cases under chapter 7 of the Bankruptcy Code or appointing a trustee in the Bankruptcy Case or appointing an examiner with enlarged powers related to the operation of the Business (beyond those set forth in section 1106(a)(3) or (4) of the Bankruptcy Code) under section 1106(b) of the Bankruptcy Code, (ii) an Order is entered (1) dismissing the Bankruptcy Case, or (2) converting the Bankruptcy Case into cases under chapter 7 of the Bankruptcy Code or appointing a trustee or examiner in the Bankruptcy Case, and, in each case, such Order is not reversed or vacated within fourteen (14) days after entry thereof, (iii) the Sale Order (1) shall not have been entered by the Bankruptcy Court by sixty (60) days after the Petition Date (unless, prior to termination of this Agreement by Purchaser, the Bankruptcy Court shall have entered the Sale Order), (2) shall have been entered in a form not acceptable to Purchaser, or (3) shall have been stayed, vacated, modified, or supplemented without Purchaser's prior written consent, (iv) Seller publicly announce, file, or otherwise takes material steps in furtherance of any chapter 11 plan(s) of reorganization or plan(s) of liquidation with respect to the Bankruptcy Case that fail to provide for or otherwise contemplate the Closing pursuant to the terms hereof, or (v) any of the conditions set forth in Article VII has become incapable of fulfillment and such condition is not waived by Purchaser;

(h) By either Purchaser or Seller if any Governmental Authority shall have issued an order, decree, or ruling or taken any other action permanently restraining, enjoining, or otherwise prohibiting the transactions contemplated by this Agreement, and such order, decree, ruling, or other action shall have become final and nonappealable;

(i) Automatically if Seller consummates any Alternative Transaction with someone other than Purchaser involving the Purchased Assets; or

(j) By Purchaser if: (i) the Auction shall not have been held, conducted, or concluded on or before fifty-five (55) days after the Petition Date; (ii) Purchaser is not selected and designated as the Successful Bidder or Back-Up Bidder in the Notice of Successful Bidder to be filed by Seller on or before two (2) days after the Auction; (iii) the Sale Hearing shall not have been held and concluded on or before sixty (60) days after the Petition Date; (iv) the Sale Order shall not have been entered on or before sixty (60) days after the Petition Date; (v) the Closing of the transactions contemplated by this Agreement shall not have occurred on or before the Termination Date; *provided*, that Seller and Purchaser may mutually agree in writing to extend such milestones in the foregoing clauses (i) through (v), in accordance with the Ratification Agreement; (vi) after the conclusion of the Auction, if Purchaser is the Successful Bidder, Seller or any of their respective Affiliates take steps in further of any Alternative Transaction; or (vii) after the conclusion of the Auction if Purchaser is the Back-Up Bidder, Seller or any of their respective Affiliates take steps in furtherance of any Alternative Transaction other than that of the Successful Bidder.

Notwithstanding anything else contained in this Agreement, the right to terminate this Agreement under this Section 8.1 shall not be available to any Party (a) that is in material breach of its obligations hereunder, or (b) whose failure to fulfill its obligations or to comply with its covenants under this Agreement has been the primary cause of, or materially contributed to, the failure to satisfy any condition to the obligations of either party hereunder.

8.2 **Effect of Termination**. In the event of termination of this Agreement by either Purchaser or Seller as provided in Section 8.1, this Agreement will forthwith become void and have no further force or effect, without any liability (other than as set forth in Section 9.3 or this Section 8.2) on the part of Purchaser or Seller; *provided*, *however*, that the provisions of this Section 8.2, Section 9.3 and Article X will survive any termination hereof; *provided*, *further*, *however*, that subject to the terms of this Section 8.2, nothing in this Section 8.2 shall relieve any Party of any liability for any breach by such Party of this Agreement prior to the date of any such termination.

ARTICLE IX
BANKRUPTCY COURT MATTERS

9.1 **Alternative Transactions**.

(a) Consummation of the transactions contemplated hereby is subject to approval by the Bankruptcy Court and the consideration by the Seller of higher or better competing bids in accordance with the Bidding Procedures. From and after the date hereof until the Auction is declared closed by Purchaser, Seller shall be permitted to cause their respective representatives and Affiliates to (i) initiate contact with, or solicit or encourage submission of any inquiries, proposals or offers by, any Person (in addition to Purchaser and its Affiliates, agents, and representatives) with respect to an Alternative Transaction, and (ii) respond to any inquiries or offers related to an Alternative Transaction and perform any and all other acts related thereto which are required or permitted under the Bankruptcy Code, the Bidding Procedures Order or other Applicable Law, including supplying information relating to the Business and the assets of Seller to prospective purchasers.

(b) If, upon completion of the Auction, Seller has agreed to sell its assets under an Alternative Transaction, Seller may select Purchaser as the Back-Up Bidder or may select another Back- Up Bidder as provided in the Bidding Procedures. Purchaser hereby agrees and acknowledges that it shall serve as a Back-Up Bidder if so requested.

9.2 **Bankruptcy Actions**.

(a) On the Petition Date, Seller shall file the Bidding Procedures Motion with the Bankruptcy Court seeking entry of the Bidding Procedures Order approving, among other things, the execution, delivery, and performance of this Agreement by Seller, other than the performance of those obligations to be performed at or after the Closing. From the date hereof until the earlier of (i) the termination of this Agreement in accordance with Article VIII, and (ii) the Closing Date, the Parties shall use their respective commercially reasonable efforts to obtain entry by the Bankruptcy Court of the Bidding Procedures Order and the Sale Order.

(b) Each of Seller and Purchaser shall (i) appear formally or informally in the Bankruptcy Court if reasonably requested by the other Party or required by the Bankruptcy Court in connection with the transactions contemplated by this Agreement, and (ii) keep the other reasonably apprised of the status of material matters related to the Agreement.

(c) No later than the times set forth in the Bidding Procedures Order (as may be modified pursuant to the terms thereof with the prior written consent of Purchaser), Seller will (subject to Purchaser's and Seller's rights and obligations set forth in Section 9.2(e) below) make all filings and give all notices relating to this Agreement as Seller is required to make and give pursuant to the Bidding Procedures Order. Seller shall take all actions as may be reasonably necessary to obtain entry of the Sale Order, including furnishing affidavits, declarations or other documents or information for filing with the Bankruptcy Court. Both Purchaser's and Seller's obligations to consummate the transactions contemplated in this Agreement shall be conditioned upon the Bankruptcy Court's entry of the Sale Order. If the Bankruptcy Court refuses to issue the Sale Order or to approve a sale of the Purchased Assets to Purchaser at the Sale Hearing, then this transaction shall automatically terminate, and Seller and Purchaser shall be relieved of any further liability or obligation hereunder. Upon entry of the Sale Order in accordance with the provisions of this Section 9.2(a), the condition set forth in this Section 9.2(a) shall conclusively be deemed satisfied.

(d) If the Sale Order, or any other orders of the Bankruptcy Court relating to this Agreement or the transactions contemplated hereby are appealed by any Person (or if any petition for certiorari or motion for reconsideration, amendment, clarification, modification, vacatur, stay, rehearing or re-argument shall be filed with respect to the Bidding Procedures Order, the Sale Order, or other such order) subject to the rights otherwise arising from this Agreement, Seller shall take all actions as may be reasonably necessary to prosecute such appeal, petition or motion and obtain an expedited resolution of any such appeal, petition or motion; *provided*, *however*, nothing herein shall be deemed to require Seller to so pursue any such appeal or other actions beyond the Termination Date if this Agreement is terminated in accordance with its terms after the Termination Date.

(e) Purchaser and Seller shall consult with each other regarding pleadings, notices and filings that either of them intends to file with the Bankruptcy Court in connection with, or which might reasonably be expected to affect the Bankruptcy Court's approval of the Sale Order, including, with respect to Seller, sharing in advance any drafts for Purchaser's review and comment, it being agreed that Seller shall give reasonable consideration to, and incorporate into the relevant pleading, notice or filing, any reasonable comments Purchaser may provide within a reasonable time prior to the filing of any of such pleading, notice or filing. Seller shall promptly provide Purchaser and its outside legal counsel with copies of all notices, filings and orders of the Bankruptcy Court that Seller has in its possession (or receives) pertaining to the Sale Order, or any other order related to any of the transactions contemplated hereby, but only to the extent such papers are not publicly available on the docket of the Bankruptcy Court. Seller shall not seek any modification to the Sale Order by the Bankruptcy Court or any other Governmental Authority of competent jurisdiction to which a decision relating to the Bankruptcy Case has been appealed, in each case, without prior written consent of Purchaser in its sole discretion.

9.3 **Sale Order**. The Sale Order shall, among other things, (a) approve, pursuant to sections 105, 363 and 365 of the Bankruptcy Code (i) the execution, delivery and performance by Seller of this Agreement, (ii) the sale of the Purchased Assets to Purchaser on the terms set forth herein and free and clear of all Liens (other than Permitted Post-Closing Encumbrances), and (iii) the execution, delivery, and performance by Seller of its obligations under this Agreement, (b) authorize and empower Seller to assume and assign to Purchaser the Assumed Contracts, (c) find that Purchaser is a "good faith" purchaser within the meaning of section 363(m) of the Bankruptcy Code, find that Purchaser is not a successor to Seller, and grant Purchaser the protections of section 363(m) of the Bankruptcy Code, (d) find that Purchaser has provided adequate assurance (as that term is used in section 365 of the Bankruptcy Code) of future performance in connection with the assumption of the Assumed Contracts, and (e) find that Purchaser shall have no Liability for any Excluded Liability or responsibility for any Liability or other obligation of Seller arising under or related to the Purchased Assets other than as expressly set forth in this Agreement, including successor or vicarious Liabilities of any kind or character, including any theory of antitrust, successor, or transferee Liability, labor law, *de facto* merger, environmental, or substantial continuity. Without limiting Seller's obligation to take all such actions as are reasonably necessary to obtain Bankruptcy Court approval of the Sale Order, Purchaser agrees that it will promptly take such actions as are reasonably requested by Seller to assist in obtaining Bankruptcy Court approval of the Sale Order, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for purposes, among others, of (A) demonstrating that Purchaser is a "good faith" purchaser under Section 363(m) of the Bankruptcy Code, and (B) establishing adequate assurance of future performance within the meaning of section 365 of the Bankruptcy Code and in accordance with the Bidding Procedures Order.

ARTICLE X
MISCELLANEOUS

10.1 **Survival**. The Parties agree that the representations, warranties, covenants or agreements contained in this Agreement (other than with respect to Section 5.6) will not survive the Closing hereunder, and none of the Parties will have any liability to each other after the Closing for any breach of such representations, warranties, covenants or agreements which may be made, or any Claim or Action instituted, after the Closing. Notwithstanding the foregoing, the covenants and agreements that by their terms are to be satisfied after the Closing Date, shall survive until satisfied in accordance with their terms.

10.2 **Notices**. Any notice, request, instruction or other document to be given hereunder by a party hereto shall be in writing and shall be deemed to have been given, (a) when received if given in person or by courier or a courier service, (b) on the date of transmission if sent by electronic mail (without receipt of a delivery error), (c) on the next Business Day if sent by an overnight delivery service, or (d) five (5) Business Days after being deposited in the U.S. mail, certified or registered mail, postage prepaid:

(a) If to Seller, addressed as follows:

US Magnesium LLC
____
____
Attn: ________________________
Email: ________________________

With a copy (which shall not constitute notice) to:

(b) If to Purchaser, addressed as follows:

LiMag Holdings LLC
One Rockefeller Plaza
29th Floor
New York, New York 10020
Attn: Josh Weiss, General Counsel of the Renco Group
Email: jweiss@rencogrp.com

With a copy (which shall not constitute notice) to:

McGuireWoods LLP
Tower Two-Sixty
260 Forbes Ave
Suite 1800
Pittsburgh, PA 15222-3142
Attn: Mark E. Freedlander
Email: mfreedlander@mcguirewoods.com

or to such other individual or address as a party hereto may designate for itself by notice given as herein provided.

10.3 **Entire Agreement**. This Agreement (including any exhibits and schedules hereto) and the other Transaction Documents represents the entire understanding and agreement between the Parties with respect to the subject matter hereof and thereof and supersedes all prior discussions and agreements between the Parties with respect to the subject matter hereof.

10.4 **Amendments and Waivers**. 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, in the case of an amendment, supplement or change, by the Parties, or in the case of a waiver, by the Party against whom enforcement of such waiver is sought. 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.

10.5 **Counterparts**. This Agreement may be executed in counterparts and such counterparts may be delivered in electronic format (including by email), all of which shall be considered an original and one and the same agreement. Such delivery of counterparts shall be conclusive evidence of the intent to be bound hereby, and each such counterpart and copies produced therefrom shall have the same effect as an original. To the extent applicable, the foregoing constitutes the election of the parties to invoke any law authorizing electronic signatures.

10.6 **Interpretation; Construction**.

(a) The Article and Section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the Parties, and shall not in any way affect the meaning or interpretation of this Agreement.

(b) Unless otherwise specified in this Agreement or the context otherwise requires: (i) the words "hereof," "herein," and "hereunder" and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement; (ii) any reference to the masculine, feminine or neuter gender shall include all genders, the plural shall include the singular, and the singular shall include the plural; (iii) all preamble, recital, Article, Section, clause, schedule and exhibit references used in this Agreement are to the preamble, recitals, articles, sections, clauses, schedules and exhibits to this Agreement; (iv) wherever the word "include," "includes," or "including" is used in this Agreement, it shall be deemed to be followed by the words "without limitation;" (v) the terms "date hereof" and "date of this Agreement" mean the date first written above; (vi) with respect to the determination of any period of time, the word "from" means "from and including" and the words "to" and "until" each means "to but excluding;" (vii) (A) any reference to "days" means calendar days unless Business Days are expressly specified, and (B) any reference to "months" or "years" shall mean calendar months or calendar years, respectively, in each case unless otherwise expressly specified; (viii) the word "extent" in the phrase "to the extent" shall mean the degree to which a subject or other thing extends and such phrase shall not mean simply "if;" (ix) each accounting term not otherwise defined in this Agreement has the meaning commonly applied to it in accordance with GAAP; (x) the term "made available" means made available in the Data Room or otherwise delivered or provided by Seller to Purchaser hereby at least one (1) Business Day prior to the date hereof; (xi) any reference in this Agreement to "***Dollars***" or "**$**" means United States dollars; (xii) time is of the essence of each and every covenant, agreement, and obligation in this Agreement, and (xiii) neither Purchaser nor Seller shall be deemed to be in breach of any covenant contained in this Agreement if such party's deemed breach is the result of any action or inaction on the part of the other.

(c) Unless otherwise specified in this Agreement, any deadline or time period set forth in this Agreement that by its terms ends on a day that is not a Business Day shall be automatically extended to the next succeeding Business Day. Unless otherwise specified in this Agreement or the context otherwise requires, all references to any (i) statute in this Agreement include the rules and regulations promulgated thereunder and all applicable guidance, guidelines, bulletins, or policies issued or made in connection therewith by a Governmental Authority, and (ii) Law in this Agreement shall be a reference to such Law as amended, re-enacted, consolidated, or replaced as of the applicable date or during the applicable period of time.

(d) Unless otherwise specified in this Agreement all references in this Agreement (i) to any Contract, other agreement, document, or instrument (excluding this Agreement) mean such Contract, other agreement, document, or instrument as amended, supplemented or otherwise modified from time to time in accordance with the terms thereof and, unless otherwise specified therein, include all schedules, annexes, addendums, exhibits and any other documents attached thereto or incorporated therein by reference, and (ii) to this Agreement mean this Agreement (taking into account the provisions of Sections 10.4) as amended, supplemented or otherwise modified from time to time in accordance with Section 10.4.

(e) With regard to each and every term and condition of this Agreement, the Parties understand and agree that the same have or has been mutually negotiated, prepared, and drafted, and that if at any time the Parties desire or are required to interpret or construe any such term or condition or any agreement or instrument subject thereto, no consideration shall be given to the issue of which Party actually prepared, drafted or requested any term or condition of this Agreement.

(f) All capitalized terms in this Agreement (including the exhibits and schedules hereto) shall have the meaning set forth in Section 1.1, except as otherwise specifically provided herein. Each of the other capitalized terms used in this Agreement has the meaning set forth where such term is first used or, if no meaning is set forth, the meaning required by the context in which such term is used.

10.7 **Binding Agreement; Assignment**. This Agreement and the other Transaction Documents shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns; *provided*, that neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned (including by operation of law) by any Party without the prior written consent of the other Party(ies). For all purposes hereof, a transfer, sale or disposition of a majority of the capital stock or other voting interest of a Party (whether by contract or otherwise) shall be deemed an assignment requiring consent hereunder. Any purported assignment in contravention of this Section 10.7 shall be null and void. Notwithstanding the foregoing or anything else in this Agreement to the contrary, Purchaser may (a) transfer or assign its rights, interests or obligations under this Agreement, in whole or from time to time in part, to one or more of its Affiliates, provided that Purchaser will remain liable for the performance of its obligations and will provide notice to Seller of such assignment; and (b) collaterally assign its rights hereunder to any lender of Purchaser. Notwithstanding anything to the contrary herein, no assignment of this Agreement or any rights, interests or obligations hereunder (including any assignment pursuant to the immediately preceding sentence) shall be deemed to release, relieve, or otherwise affect the assigning Party's continuing liability hereunder.

10.8 **Third Party Beneficiaries**. This Agreement is solely for the benefit of the Parties hereto, and no provision of this Agreement shall be deemed to confer upon third parties, either express or implied, any remedy, claim, liability, reimbursement, cause of action or other right.

10.9 **Further Assurances**. Upon the reasonable request of Purchaser or Seller, each Party will, on and after the Closing Date, execute and deliver to the other Parties such other documents, assignments and other instruments as may be reasonably required (without imposing any material monetary obligations or other obligations beyond those specifically imposed on the cooperating Party(ies) by the other provisions of this Agreement or the other Transaction Documents) to effectuate completely the transactions contemplated hereby, and to effect and evidence the provisions of this Agreement and the other Transaction Documents and the transactions contemplated hereby. For the avoidance of doubt, as to Seller, the obligations set forth in this Section 10.9 shall lapse and cease to be of any further force or effect upon the closing of the Bankruptcy Case.

10.10 **Governing Law**. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF DELAWARE WITHOUT GIVING EFFECT TO THE PRINCIPLES OF CONFLICTS OF LAW THEREOF.

10.11 **EXCLUSIVE JURISDICTION OF THE BANKRUPTCY COURT**. IN THE EVENT ANY PARTY TO THIS AGREEMENT COMMENCES ANY LITIGATION, PROCEEDING, OR OTHER LEGAL ACTION IN CONNECTION WITH OR RELATING TO THIS AGREEMENT, ANY OTHER TRANSACTION DOCUMENT OR ANY MATTERS DESCRIBED OR CONTEMPLATED HEREIN OR THEREIN, THE PARTIES TO THIS AGREEMENT HEREBY (A) AGREE ANY LITIGATION, PROCEEDING, OR OTHER LEGAL ACTION SHALL BE INSTITUTED ONLY IN THE BANKRUPTCY COURT, WHICH SHALL HAVE SOLE AND EXCLUSIVE JURISDICTION OVER ANY SUCH MATTERS; (B) CONSENT AND SUBMIT TO PERSONAL JURISDICTION OF THE BANKRUPTCY COURT AND TO SERVICE OF PROCESS UPON THEM IN ACCORDANCE WITH THE RULES AND STATUTES GOVERNING SERVICE OF PROCESS; AND (C) AGREE TO WAIVE TO THE FULL EXTENT PERMITTED BY LAW ANY OBJECTION THAT THEY MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH LITIGATION, PROCEEDING OR ACTION IN ANY SUCH COURT OR THAT ANY SUCH LITIGATION, PROCEEDING, OR ACTION WAS BROUGHT IN AN INCONVENIENT FORUM.

10.12 **WAIVER OF JURY TRIAL**. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (B) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) EACH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.12.

10.13 **Schedules**. Provided that any such amended disclosure or updated schedule does not materially affect the value of the Purchased Assets or result in additional liability to Purchaser, Purchaser and Seller may mutually agree at any time prior to Closing to amend all schedules to correct errors and to add omitted items, or new items that first arise or occur after the date hereof.

10.14 **Severability**. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction declares that any term or provision hereof is invalid or unenforceable, the Parties agree that the court making the determination of invalidity or unenforceability shall have the power to reduce the scope, duration, or area of the term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be enforceable as so modified after the expiration of the time within which the judgment may be appealed.

10.15 **Expenses**. Except as otherwise provided in this Agreement, whether or not the Closing occurs, all Expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such Expenses.

10.16 **Attorneys' Fees**. In the event that Seller or Purchaser bring an action or other proceeding to enforce or interpret the terms and provisions of this Agreement, the prevailing party(ies) in that action or proceeding shall be entitled to have and recover from the non-prevailing party(ies) all such reasonable, out of pocket fees, costs, and expenses (including, without limitation, all court costs and reasonable attorneys' fees) as the prevailing party(ies) may suffer or incur in the pursuit or defense of such action or proceeding.

10.17 **Bulk Transfer Laws**. The Parties intend that, under section 363(f) of the Bankruptcy Code, the transfer of the Purchased Assets shall be free and clear of any encumbrances arising out of bulk transfer Laws, and the Parties shall take such steps as may be necessary or appropriate to so provide in the Sale Order. In furtherance of the foregoing, each Party hereby waives compliance by the Parties with "bulk sales," "bulk transfers," or similar Laws in respect of the transactions contemplated by this Agreement.

10.18 **No Vicarious Liability**. This Agreement may only be enforced against the Parties hereto and their respective successors and permitted assigns. Any Claims or Actions that may be based upon, arise out of, or relate to this Agreement or the negotiation, execution, or performance of this Agreement (including any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement) may be made only against the Persons that are signatories to this Agreement, and their respective successors and permitted assigns, and no agent, Affiliate, or representative of any such Person (including any Person negotiating or executing this Agreement on behalf of such Person), will have any liability with respect to this Agreement or with respect to any Claim or Action that may arise out of or relate to this Agreement, or the negotiation, execution, or performance of this Agreement (including a representation or warranty made in connection with this Agreement or as an inducement to enter into this Agreement). Nothing in this Section 10.18 will impair or adversely affect the rights of Purchaser or any other Person set forth in any other agreement executed and delivered in connection with the consummation of the transactions contemplated under this Agreement and the other Transaction Documents.

10.19 **Specific Performance**. The Parties agree that irreparable damages would occur if any provision of this Agreement is not performed in accordance with its specific terms or is otherwise breached and that damages at law may be an inadequate remedy for the breach of any of the covenants, promises, and agreements contained in this Agreement. Accordingly, Seller, on the one hand, and Purchaser on the other hand, will be entitled to obtain an injunction or injunctions to prevent breach of the provisions of this Agreement and to enforce specifically this Agreement and its terms and provisions, without the necessity of posting bond or other security against it or of proving the inadequacy of money damages as a remedy, in addition to any other remedy to which they may be entitled, at law or in equity. The Parties agree not to raise any objections to the availability of the equitable remedy of specific performance to prevent or restrain breaches of this Agreement by Purchaser or Seller, as applicable, and to specifically enforce the terms and provisions of this Agreement to prevent breaches or threatened breaches of, or to enforce compliance with, the respective covenants and obligations of Purchaser or Seller, as applicable, under this Agreement, all in accordance with the terms of this Section 10.19.

[*Signature page follows*]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

SELLER:

US MAGNESIUM, LLC

By: Ronald A Mayo
Name: Ronald A Mayo
Title: CRO

PURCHASER:

LiMag Holdings LLC

By: ______________________
Name:
Title:

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

SELLER:

US MAGNESIUM, LLC

By: ______________________________
Name:
Title:

PURCHASER:

LiMag Holdings LLC

By: James W. Reitzig
Name: James W. Reitzig
Title:

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: US MAGNESIUM LLC,[1] Debtor.	Chapter 11 Case No. 25-11696 (BLS) **Hearing Date: October 6, 2025 at 11:00 am (ET)** **Objection Deadline: September 29, 2025 at 4:00 pm (ET)**

NOTICE OF DEBTOR'S MOTION FOR ENTRY OF (I) AN ORDER (A) APPROVING BID PROCEDURES IN CONNECTION WITH THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS, (B) APPROVING THE FORM AND MANNER OF NOTICE THEREOF, (C) SCHEDULING AN AUCTION AND SALE HEARING, (D) APPROVING PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF CONTRACTS AND LEASES, AND (E) GRANTING RELATED RELIEF AND (II) AN ORDER (A) APPROVING THE STALKING HORSE APA BETWEEN THE DEBTOR AND THE STALKING HORSE BIDDER, (B) AUTHORIZING THE SALE TO THE STALKING HORSE BIDDER OR THE SUCCESSFUL BIDDER OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS, (C) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CONTRACTS AND LEASES, AND (D) GRANTING RELATED RELIEF

PLEASE TAKE NOTICE that on September 15, 2025, the debtor and debtor in possession (the "Debtor") filed the *Debtor's Motion For Entry of (I) an Order (A) Approving Bid Procedures in Connection With The Sale of Substantially All of The Debtor's Assets, (B) Approving The Form and Manner of Notice Thereof, (C) Scheduling an Auction and Sale Hearing, (D) Approving Procedures For The Assumption and Assignment of Contracts and Leases, and (E) Granting Related Relief and (II) an Order (A) Approving The Stalking Horse APA Between The Debtor and The Stalking Horse Bidder, (B) Authorizing The Sale to The Stalking Horse Bidder or The Successful Bidder of Substantially All of The Debtor's Assets Free and Clear Of Liens, Claims, Encumbrances, and Interests, (C) Authorizing The Assumption and Assignment of Contracts and*

[1] The last four digits of the Debtor's federal tax identification number are 5446. The Debtor's address is 238 N 2200 W, Salt Lake City, Utah 84116

Leases, and (D) Granting Related Relief (the "Motion") with the United States Bankruptcy Court for the District of Delaware (the "Court").

PLEASE TAKE FURTHER NOTICE that if you oppose the Motion or if you want the court to consider your views regarding the Motion, you must file a written response with the Court detailing your objection or response by **September 29, 2025 at 4:00 p.m. (ET).** You must also serve a copy of your response upon undersigned proposed counsel for the Debtor.

PLEASE TAKE FURTHER NOTICE that the hearing on the Motion is scheduled for **October 6, 2025, at 11:00 a.m. (ET)** before the Honorable Brendan Linehan Shannon in Courtroom No. 1, 6th Floor, in the United States Bankruptcy Court located at 824 N. Market Street, Wilmington, Delaware 19801.

IF YOU DO NOT TAKE THESE STEPS BY THE DEADLINE, THE COURT MAY DECIDE THAT YOU DO NOT OPPOSE THE RELIEF SOUGHT IN THE MOTION AND MAY GRANT OR OTHERWISE DISPOSE OF THE MOTION BEFORE THE SCHEDULED HEARING DATE.

Dated: September 15, 2025

GELLERT SEITZ BUSENKELL & BROWN, LLC

/s/ Michael Busenkell
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Margaret M. Manning (DE 4183)
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Proposed Counsel to the Debtor and Debtor-in-Possession