

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re: **Jointly Administered under  
Case No. 15-50307**

MAGNETATION LLC, et al, Court File No. 15-50307 (WJF)

Debtors.

Court File Nos.:

(includes:

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

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

Chapter 11 Cases  
Judge William J. Fisher

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

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

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

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

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

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

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

## **BACKGROUND**

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

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

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

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

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

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

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

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

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

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

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

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

**The Proposed Sale of the Remaining Assets**<sup>1</sup>

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

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

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

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

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

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

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

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

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<sup>3</sup> ERP is the true purchaser, and, thus, the findings of fact and conclusions of law in the Sale Order will be also for the benefit of ERP.

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

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

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

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

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

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

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

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

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

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

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

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

**NOTICE OF THE SALE**

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

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

### **Proposed Assumptions and Assignments**

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

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<sup>5</sup> The presence of any contract or lease on such schedule does not constitute an admission that such contract or lease is an executory contract or unexpired lease.

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

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

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

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

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

#### **Request for Waiver of Stay**

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

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

**REQUEST FOR EXPEDITED RELIEF**

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

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

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

**NO PRIOR REQUEST**

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

WHEREFORE, the Debtors request entry of an order:

- A. granting expedited relief;
- B. authorizing entry into and performance under the APA and the Restated and Amended Technology License Agreement;
- C. approving the sale and transfer of the Debtors' assets and liabilities in accordance with the APA;
- D. authorizing the assumption and assignment of certain executory contracts and unexpired leases in connection with the Sale;
- E. finding that the APA and the transactions contemplated therein and associated therewith were negotiated, proposed, and entered into by the Debtors, the Credit Bidding Parties, and the Buyer (and the holders of interests in the Buyer) without collusion, in good faith, and from arm's-length bargaining positions, and that the Sale may not be avoided pursuant to Bankruptcy Code section 363(n);
- F. finding that the Sale is exempt from state sales and use tax or similar taxes, no bulk sales law or similar law shall apply in any way to the transactions contemplated by the Sale or the APA, and no withholding of U.S. federal income tax pursuant to Sections 1441 or 1442 of the Internal Revenue Code is required;
- G. waiving any stay, including pursuant to Bankruptcy Rules 6004(h) and 6006(d);  
and
- H. granting such other relief as the Court deems just and equitable.

Dated: December 6, 2016

DAVIS POLK & WARDWELL LLP

/s/ Michelle M. McGreal

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-and-

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