

EXHIBIT B

Proposed Sale Order

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In re:)	
)	Chapter 11
REPUBLIC METALS REFINING)	
CORPORATION, <i>et al.</i> , ¹)	Case No. 18-13359 (shl)
)	
Debtors.)	(Jointly Administered)

ORDER APPROVING SALE OF ALL OR SUBSTANTIALLY ALL OF DEBTORS' ASSETS AND GRANTING RELATED RELIEF

Upon consideration of the *Motion for Order (i) Authorizing and Approving Procedures for the Sale of the Debtors' Assets; (ii) Scheduling a Sale Hearing; (iii) Approving Procedures for Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with the Sale; (iv) Approving Sale of Property Free and Clear of Interests; and (v) Approving Form of Notice of Sale* filed by the above-captioned Debtors and Debtors-in-possession (collectively, the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Republic Metals Refining Corporation, 15 West 47th Street, Suites 206 and 209, New York, NY 10036 (3194), Republic Metals Corporation, 12900 NW 38th Avenue, Miami, FL 33054 (4378), Republic Carbon Company, LLC, 5295 Northwest 163rd Street, Miami Gardens, FL 33014 (5833), Republic High Tech Metals, LLC, 13001 NW 38 Avenue, Miami, FL 33054 (6102), RMC Diamonds, LLC, 12900 NW 38th Avenue, Miami, FL 33054 (1507), RMC2, LLC, 12900 NW 38th Avenue, Miami, FL 33054 (4696), J & L Republic LLC, 12900 NW 38th Avenue, Miami, FL 33054 (7604); R & R Metals, LLC, 12900 NW 38th Avenue, Miami, FL 33054 (7848), Republic Metals Trading (Shanghai) Co., Ltd., 276 Ningbo Road, Huangpu District, Shanghai, P.R. 200001 China (1639), and Republic Trans Mexico Metals, S.R.L., Francisco I. Madero No. 55 Piso 5, Local 409, Centro Joyero Edificio Central, Delegación Cuauhtémoc, Mexico DF 6000 (2942).

"Debtors") (the "Motion");² and a hearing having been held on January 9, 2018, whereupon the Court entered an Order approving bidding procedures (the "Bid Procedures Order"); and it appearing that the relief requested is in the best interests of the Debtors, their estates, the Senior Lenders, their creditors, and other parties in interest; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that consideration of the Motion and the relief requested therein is a core proceeding pursuant to 28 U.S.C. § 157; and adequate notice of the Motion having been given and it appearing that no other notice need be given; and the Debtors and successfully Bidder (the "Purchaser") having agreed upon the terms and conditions for the Purchaser to acquire certain assets of the Debtors (the "Assets") pursuant to the terms and conditions set forth in the Asset Purchase Agreement by and between the Purchaser and the Debtors (the "APA") attached hereto as **Exhibit 1**; and the transaction represented by the APA having been determined to be the highest and best offer for the Assets; and a sale hearing having been held on February _____, 2019 (the "Sale Hearing") to consider the relief requested in the Motion and approval of the APA and the transaction contemplated thereby; provided further, that should the Purchaser fail to consummate the Sale, as contemplated by this Order, the Bid Procedures Order and the APA, the Debtors are authorized to consummate the Sale of the Assets with the Back-up Bidder, on the terms set forth on the Back-up Bidder APA, attached hereto as **Exhibit 2** (the "Back-up APA") and appearances of all interested parties having been noted on the record of the Sale Hearing; and upon the Declarations filed in support of the Motion; and upon all of the proceedings at the Sale Hearing (including but not limited to the testimony and other evidence proffered or adduced at the Sale Hearing); and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, its estate, its creditors, and all parties in interest

² All capitalized terms not otherwise defined in this Order have the meaning ascribed to them in the Motion.

and 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

A. Jurisdiction: This Court has jurisdiction to consider the Sale of the Debtors' Assets, the transaction contemplated by the APA, the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1134 and approval of the Debtors' entry into the APA and the performance of the transaction contemplated thereby is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A), (D), (N) and (O).

B. Venue: Venue of this case in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Statutory Predicates: The statutory predicates for the approval of the APA and the transaction contemplated therein (i) sections 105, 363, and 365 of the Bankruptcy Code; (ii) Bankruptcy Rules 2002(a)(2), 6004, 6006, 9007, and 9014; (iii) Local Rules 2002-1, 6004-1, 6006-1, and 9006-1(b), and (iv) the Sale Guidelines.

D. Notice: Proper, timely, adequate and sufficient notice of the Motion, the relief requested therein and the Sale Hearing has been provided in accordance with sections 102(1), 105(a), 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9007 and 9014, and in compliance with the Bid Procedures Order, including without limitation to the Notice Parties. No other or further notice is required.

E. Opportunity to be Heard: A reasonable opportunity to object or be heard regarding the relief requested in the Motion and the transaction pursuant thereto has been

³ The findings of fact and the conclusions of law stated herein shall 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 any finding of fact shall be determined to be a conclusion of law, it shall be so deemed, and to the extent any conclusion of law shall be determined to be a finding of fact, it shall be so deemed.

afforded to all interested persons and entities, including, without limitation, the following: (i) the United States Trustee for the Southern District of New York; (ii) proposed counsel to the Committee; (iii) counsel for the Senior Lenders; (iv) the Debtors' 30 largest unsecured creditors; (v) the United States Attorney's Office for the Southern District of New York; (vi) the Internal Revenue Service; (vii) the office of the attorneys general for the states in which the Debtors operate; (viii) all parties who have expressed a written interest in some or all of the Assets; (ix) each governmental agency that is an interested party with respect to the Sale; (x) all parties which, to the best of the Debtors' knowledge, information, and belief, had asserted or then may have asserted a lien in any of the Debtors' Assets, (xi) all parties to executory contracts and unexpired leases proposed to be assumed and assigned, or rejected, as part of the proposed transaction; and (xii) all parties who have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rules 2002 and 9010(b). Objections, if any, to the Motion have been withdrawn or resolved and, to the extent not withdrawn or resolved, are hereby overruled.

F. Marketing Process: As demonstrated by: (i) Declaration of Scott Avila (ii) the testimony and other evidence proffered or adduced at the Sale Hearing and (iii) the representations of counsel made on the record at the Sale Hearing, the Debtors have thoroughly marketed the Assets and have conducted the bidding solicitation fairly, with adequate opportunity for parties that either expressed an interest in acquiring or liquidating the Assets, or who the Debtors believe may have an interest in acquiring or liquidating the Assets, to submit competing bids. The Debtors and Purchaser have respectively negotiated and undertaken their roles leading to the Sale, entry into the APA and the transaction contemplated thereby in a diligent, noncollusive, fair and good faith manner.

G. Highest and Best Offer: The APA, including the form and total consideration to be realized by the Debtors pursuant to the APA, (i) constitutes the highest and best offer received by the Debtors for the Assets, (ii) is fair and reasonable, and (iii) is in the best interests of the Debtors, their estates, their creditors and all other parties in interest. There is no legal or equitable reason to delay entry into the APA, and the transaction contemplated therein, including, without limitation, the sale of the Assets to the Purchaser (the "Sale").

H. Business Judgment: The Debtors' decision to (i) enter into the APA, and (ii) perform as required by the APA, is a reasonable exercise of the Debtors' sound business judgment consistent with their fiduciary duties and is in the best interests of the Debtors, its estate, its creditors, and all other parties in interest.

I. Time of the Essence: Time is of the essence in effectuating the APA and proceeding with the Sale of the Assets contemplated therein without interruption. Based on the record of the Sale Hearing, and for the reasons stated on the record at the Sale Hearing, the Sale pursuant to the APA must be commenced as soon as reasonably practicable after entry of this Order to maximize the value that the Debtors may realize from entering into the APA. Accordingly, cause exists to vacate the stay to the extent necessary, as contemplated by Bankruptcy Rule 6004(h) and permit the immediate effectiveness of this Order.

J. Sale Free and Clear: A sale of the Assets other than one free and clear of liens, claims, encumbrances, defenses (including, without limitation, rights of setoff and recoupment) and interests, including, without limitation, security interests of whatever kind or nature, mortgages, conditional sales or title retention agreements, pledges, deeds of trust, hypothecations, liens, encumbrances, assignments, preferences, debts, easements, charges, suits, licenses, options, rights-of-recovery, judgments, orders and decrees of any court or foreign or

domestic governmental entity, taxes (including foreign, state and local taxes), licenses, covenants, restrictions, indentures, instruments, leases, options, off-sets, claims for reimbursement, contribution, indemnity or exoneration, successor, product, environmental, tax, labor, ERISA, CERCLA, alter ego and other liabilities, causes of action, contract rights and claims, to the fullest extent of the law, in each case, of any kind or nature (including, without limitation, all "claims" as defined in section 101(5) of the Bankruptcy Code), known or unknown, whether pre-petition or post-petition, secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, perfected or unperfected, liquidated or unliquidated, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, material or non-material, statutory or non-statutory, matured or unmatured, legal or equitable (collectively, "Interests or Claims") and without the protections of this Order would hinder the Debtors' ability to obtain the consideration provided for in the APA and, thus, would impact materially and adversely the value that the Debtors' estates would be able to obtain for the sale of such assets. But for the protections afforded to the Purchaser under the Bankruptcy Code and this Order, the Purchaser would not have offered to pay the consideration contemplated in the APA. The Senior Lenders have consented to the sale of the Assets pursuant to the APA subject to application of proceeds from such Sale in accordance with a further Order of this Court. In addition, each entity with an Interest or Claim upon the Assets, (i) has either consented to the Sale, has not objected, or is deemed to have consented to the Sale, (ii) could be compelled in a legal or equitable proceeding to accept money satisfaction of such interest, or (iii) otherwise falls within the provisions of section 363(f) of the Bankruptcy Code, and therefore, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those holders of Interests or Claims who did not object, or

who withdrew objections, to the Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. Therefore, approval of the APA and the consummation of the Sale free and clear of Interests or Claims (with such Interests and Claims attaching to the proceeds of such sale by the Debtors) is appropriate pursuant to section 363(f) of the Bankruptcy Code and is in the best interests of the Debtors' estates, their creditors and other parties in interest.

K. Attachment of Interests or Claims to Proceeds: Any currently existing Interests or Claims encumbering all or any portion of the Assets shall attach to the amounts to be received by the Debtors under the APA, with the same validity, priority, force and effect as the same had with respect to the assets at issue, subject to any and all defenses, claims and/or counterclaims or setoffs that may exist. The Purchaser has not agreed to assume and shall have no obligations with respect to any liabilities of the Debtors or their subsidiaries or affiliates other than, solely with respect to the Purchaser, the Assumed Liabilities (as defined in the APA).

L. Arm's-length Sale: The APA, as well as consideration to be paid by the Purchaser under the APA, was negotiated at arm's-length and constitutes reasonably equivalent value and fair and adequate consideration for the Assets under the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act and the laws of the United States, any state, territory, possession thereof or the District of Columbia. The terms and conditions set forth in the APA are fair and reasonable under these circumstances and were not entered into for the purpose of, nor do they have the effect of, hindering, delaying or defrauding the Debtors or their creditors under any applicable laws.

M. Good Faith: The Debtors, their management and boards of directors, and the Purchaser, its members and its officers, directors, employees, agents and representatives actively participated in the bidding process and acted in good faith. The Debtors and their advisers, after

extensive deliberation, determined that the APA constitutes the highest and best offer among multiple rounds of competitive bids received by the Debtors during an Auction held on January 31, 2019. The APA was negotiated and entered into based upon arm's length bargaining, without collusion or fraud, and in good faith as that term is used in section 363(m) of the Bankruptcy Code. The Purchaser shall be protected as a good faith purchaser by section 363(m) of the Bankruptcy Code in the event that this Order is reversed or modified on appeal. The Debtors were free to deal with any other party interested in buying or selling on behalf of the Debtors' estates some or all of the Assets. Neither the Debtors nor the Purchaser engaged in any conduct that would cause or permit the Sale, the APA, or any related action or the transaction contemplated thereby to be avoided under section 363(n) of the Bankruptcy Code, or that would prevent the application of section 363(m) of the Bankruptcy Code. The Purchaser did not violate section 363(n) of the Bankruptcy Code by any action or inaction. Specifically, the Purchaser has not acted in a collusive manner with any person and was not controlled by any agreement among bidders. The Purchaser's prospective performance and payment of amounts owing under the APA are in good faith and for valid business purposes and uses.

N. Insider Status: The Purchaser is not an "insider" as that term is defined in section 101(31) of the Bankruptcy Code. No common identity of directors or controlling stockholders exists between the Purchaser and the Debtors.

O. Corporate Authority: The Debtors have full corporate or other power and authority to execute, deliver and perform its obligations under the APA and to consummate all transaction contemplated thereby (including, without limitation, entering into and performing under each of the ancillary agreements, instruments or other documents contemplated by the

APA) and entry into, delivery and performance under the APA and consummation of all transaction contemplated thereby (including, without limitation, entering into and performing under each of the ancillary agreements, instruments or other documents contemplated by the APA) has been duly and validly authorized by all necessary corporate or similar action. No consents or approvals, other than those expressly provided for herein or in the APA, are required for the Debtors to consummate such transaction.

P. No Successor Liability: No sale, transfer or other disposition of the Assets pursuant to the APA, entry in the APA or consummation of the transaction contemplated by the APA will subject the Purchaser to any liability for Interests or Claims asserted against the Debtors or the Debtors' interests in the Assets by reason of such transfer under any laws, including, without limitation, any bulk-transfer laws or any theory of successor or transferee liability, antitrust, environmental, product line, de facto merger or substantial continuity or similar theories. The Purchaser is not the alter ego of, a successor in interest to or a continuation of the Debtors or their estates and there is no continuity between the Purchaser, on the one hand, and the Debtors, on the other hand. The Purchaser is not holding itself out to the public as a continuation of the Debtors. The Purchaser is not a successor to the Debtors or their estates and consummation of the Sale contemplated by the APA does not amount to a consolidation, merger, or de facto merger of the Purchaser, on the one hand, and the Debtors, on the other hand.

Q. No Sub Rosa Plan: Entry into the APA and the transaction contemplated thereby neither impermissibly restructures the rights of the Debtors' creditors, nor impermissibly dictates the terms of a liquidating plan of reorganization for the Debtors. Entry into the APA does not constitute a sub rosa chapter 11 plan.

R. Assumption and Assignment: The assumption and assignment of the Assigned Contracts and Assumed Leases (as defined in the APA) pursuant to the terms of this Order is integral to the APA and is in the best interests of the Debtors and their estates, creditors, and other parties in interest, and represents the reasonable exercise of sound and prudent business judgments by the Debtors.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED

THAT:

A. Motion Granted, Objections Overruled

1. The relief requested in the Motion is granted as set forth herein, and the Sale contemplated by this Order and the APA are approved as set forth herein.

2. Should the Purchaser fail to consummate the Sale, as contemplated by this Order, the Bid Procedures Order and the APA, the Debtors are authorized to consummate the Sale of the Assets with the Back-up Bidder, on the terms set forth in the Back-up Bidder APA, in which event, the Back-up Bidder and the Back-up APA shall be substitute in the place of Purchaser and APA, as applicable in this Order, as if originally set forth herein.

3. Any remaining objections to the Motion or the relief requested therein that have not been withdrawn, waived, or settled, and all reservations of rights included in such objections are overruled in all respects and denied.

B. APA Approved and Authorized

4. The APA is approved pursuant to (i) sections 105, 363, and 365 of the Bankruptcy Code; (ii) Bankruptcy Rules 2002(a)(2), 6004, 6006, 9007, and 9014; (iii) Local Rules 2002-1, 6004-1, 6006-1, and 9006-1(b), and (iv) the Sale Guidelines. The Debtors are hereby authorized, empowered and directed to enter into and perform under the APA and the transactions contemplated therein (including, without limitation, entering into and performing

under each of the ancillary agreements, instruments or other documents contemplated thereby), each of which is hereby approved in its entirety and is incorporated herein by reference. The failure to include specifically any particular provision of the APA in this Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court that the APA and all of its provisions, payments and transaction, be authorized and approved in its entirety. Likewise, all of the provisions of this Order are nonseverable and mutually dependent.

5. All amounts payable by the Purchaser under the APA shall be payable to the Debtors to be held in a separate and segregated DIP account for distribution pursuant to a further Order of this Court.

6. Subject to the provisions of this Order, the Debtors and the Purchaser are hereby authorized, pursuant to sections 105(a) and 363(b)(1) of the Bankruptcy Code, to consummate the Sale in accordance with the APA.

7. Pursuant to section 363(b) of the Bankruptcy Code, the Debtors, the Purchaser and each of its respective officers, employees and agents are hereby authorized and directed to execute such documents and to do such acts as are reasonably necessary or desirable to carry out the Sale contemplated by the APA and to effectuate the APA and the transaction contemplated therein. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.

C. Order Binding

8. This Order may be presented to any and all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state and local officials, and all other persons and entities who may be required by

operation of law, to facilitate the effectuation of the duties of its office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to the Assets. This Order, and the terms and provisions of the APA shall be binding on all of the Debtors' creditors and equity holders (whether known or unknown), the Debtors, their estates, the Purchaser, and its respective affiliates, successors and assigns, and any affected third parties including, but not limited to, all persons asserting any Interest or Claim against the Debtors or in the Assets and all counterparties to any executory contract or unexpired lease of the Debtors, notwithstanding any subsequent appointment of any trustee, party, entity or other fiduciary under any section of the Bankruptcy Code with respect to the forgoing parties, and as to such trustee, party, entity or other fiduciary, such terms and provisions likewise shall be binding. The provisions of this Order and the terms and provisions of the APA, and any actions taken pursuant hereto or thereto shall survive the entry of any order which may be entered confirming or consummating any plan(s) of the Debtors, converting the Debtors' case from chapter 11 to chapter 7 or dismissing the Debtors' cases, and the terms and provisions of the APA, as well as the rights and interests granted pursuant to this Order and the APA, shall continue in this or any superseding cases and shall be binding upon the Debtors, Purchaser and its respective successors and permitted assigns, including any trustee or other fiduciary hereafter appointed as a legal representative of the Debtors under chapter 7 or chapter 11 of the Bankruptcy Code. Any trustee appointed in these cases shall be and hereby is authorized to operate the business of the Debtors to the fullest extent necessary to permit compliance with the terms of this Order and the APA, and the Purchaser and the trustee shall be and hereby are authorized to perform under the APA upon the appointment of the trustee without the need for further order of this Court.

D. Good Faith.

9. Entry into the APA is undertaken by the parties thereto in good faith, as that term is used in sections 363(m) and 364(e) of the Bankruptcy Code, and the Purchaser shall be protected as a good faith purchaser by sections 363(m) and 364(e) of the Bankruptcy Code in the event that this Order is reversed or modified on appeal. The reversal or modification on appeal of the authorization provided herein to enter into the APA and to consummate the transaction contemplated thereby shall not affect the validity of such transaction, unless such authorization is duly stayed pending such appeal. The Purchaser is entitled to all of the benefits and protections afforded to good faith purchasers by sections 363(m) and 364(e) of the Bankruptcy Code. The transaction contemplated by the APA is not subject to avoidance pursuant to section 363(n) of the Bankruptcy Code.

E. Conduct of the Sale

10. Except as otherwise provided in the APA, pursuant to sections 105(a), 363(b), 363(f), 365(b) and 365(f) of the Bankruptcy Code, following the Closing (as defined in the APA), the Debtors shall be authorized to sell and transfer to the Purchaser the Assets pursuant to the APA, in each case free and clear of any and all Interests or Claims, whether arising by agreement, any statute or otherwise and whether arising before, on or after the date on which this chapter 11 case was commenced, with any presently existing Interests or Claims encumbering all or any portion of the Assets or the proceeds thereof (including, but not limited to, the security interest of the Senior Lenders) attaching only to the proceeds with the same validity, priority, force and effect as the same had with respect to the assets at issue, subject to any and all defenses, claims and/or counterclaims or setoffs that may exist.

11. If any person or entity that has filed financing statements, mortgages, construction or mechanic's liens, lis pendens or other documents or agreement evidencing Interests or Claims on or in the Assets shall not have delivered to the Debtors, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, or releases of any Interests or Claims which the person or entity has with respect to the Assets, each such person or entity is hereby authorized and directed to deliver all such statements, instruments and releases and Debtors and the Purchaser are hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity asserting the same and the Debtors and the Purchaser are authorized to file a copy of this Order which, upon filing, shall be conclusive evidence of the release and termination of such Interest or Claim. Each and every federal, state and local governmental unit is hereby authorized to accept any and all documents and instruments necessary or appropriate to give effect to the Sale contemplated by the APA. Moreover, effective as of the Closing, the Purchaser (and its successors and assigns) shall be designated and appointed the Debtors' true and lawful attorney, with full power of substitution, in the Debtors' name and stead, on behalf and for the benefit of the Purchaser (and its successors and assigns), to demand and receive any and all of the Assets and to give receipts and releases for and in respect of the Assets, or any part thereof, and from time to time to institute and prosecute in the Debtors' name, for the benefit of the Purchaser (and its successors and assigns), any and all proceedings at law, in equity or otherwise, which the Purchaser (and its successors and assigns) may deem proper for the collection or reduction to possession of any of the Assets, and to do all acts and things with respect to the Assets which the Purchaser (and its successors and assigns) shall deem desirable. The foregoing powers are coupled with an interest and are and shall be irrevocable by the Debtors.

12. All entities that are presently in possession of some or all of the Assets hereby are directed to surrender possession of such Assets or other property to the Purchaser.

13. Nothing in this Order or APA releases, nullifies, or enjoins the enforcement of any liability to a governmental unit under environmental laws or regulations (or any associated liabilities for penalties, damages, cost recovery, or injunctive relief) that any entity would be subject to as the owner, lessor, lessee, or operator of the property after the date of entry of this Order. Nothing contained in this Order or APA shall in any way (i) diminish the obligation of any entity to comply with environmental laws, or (ii) diminish the obligations of the Debtors to comply with environmental laws consistent with their rights and obligations as Debtors in possession under the Bankruptcy Code. Nothing herein shall be construed to be a determination that the Purchaser is an operator with respect to any environmental law or regulation. Moreover, the Sale shall not be exempt from, and the Purchaser shall be required to comply with, laws of general applicability, including, without limitation, public health and safety, criminal, tax, labor, employment, environmental, antitrust, fair competition, traffic and consumer protection laws (collectively, "General Laws"). Nothing in this Order shall alter or affect the Debtors' and the Purchaser's obligations to comply with all applicable federal safety laws and regulations. Nothing in this Order shall be deemed to bar any Governmental Unit (as defined in Bankruptcy Code section 101(27)) from enforcing General Laws in the applicable non-bankruptcy forum, subject to the Debtors' and the Purchaser's right to assert in that forum or before this Court that any such laws are not in fact General Laws or that such enforcement is impermissible under the Bankruptcy Code or this Order. Notwithstanding any other provision in this Order, no party waives any rights to argue any position with respect to whether the conduct was in compliance with this Order and/or any applicable law, or that enforcement of such applicable law is

preempted by the Bankruptcy Code. Nothing in this Order shall be deemed to have made any rulings on any such issues.

14. Except as expressly provided for herein or in the APA, no person or entity, including but not limited to any landlord, licensor, or creditor, shall take any action to directly or indirectly prevent, interfere with, or otherwise hinder consummation of the Sale pursuant to the terms of the APA, and all such parties and persons of every nature and description, including landlords, licensors, creditors and utility companies and all those acting for or on behalf of such parties, are prohibited and enjoined from (i) interfering in any way with, or otherwise impeding, the consummation of the sale of the Assets to the Purchaser or the conduct of the Sale and/or (ii) instituting any action or proceeding in any court or administrative body seeking an order or judgment against, among others, the Debtors or the Purchaser that might in any way directly or indirectly obstruct or otherwise interfere with or adversely affect the consummation of the Sale and/or seek to recover damages for breach(es) of covenants or provisions in any lease, sublease or license based upon any relief authorized herein.

15. Nothing in this Order shall (a) alter or affect the Purchaser's obligations (including payment obligations) to comply with section 365(d)(3) of the Bankruptcy Code; provided that the conduct of the Sale in accordance with the APA, shall not be a violation of section 365(d)(3) of the Bankruptcy Code.

16. Except as expressly set forth in the APA, the Purchaser shall not have any obligation, as successor or otherwise (including, without limitation, with respect to successor or vicarious liabilities of any kind or character), under any theory of law or equity, to pay wages, bonuses, severance pay, benefits (including, without limitation, contributions or payments on account of any under-funding with respect to any and all pension plans), or any other payment to

employees of the Debtors or any of its affiliates, and the Purchaser shall not have any liability, as successor or otherwise (including, without limitation, with respect to successor or vicarious liabilities of any kind or character), under any theory of law or equity, with respect to the following (collectively, the "Employee Obligations"): (a) any employment or labor agreements (including, without limitation, any collective bargaining agreements), consulting agreements, severance arrangements, change-in-control agreements, or other similar agreement to which any Debtors or any of its affiliates are a party; (b) any pension, welfare, compensation, retention, incentive or other employee benefit plans, agreements, practices, or programs to which any Debtors or any of its affiliates are a party, including, without limitation, any pension plan at any time sponsored, maintained, contributed to, or required to be contributed to by any of the Debtors, any of its affiliates or any member of any of its respective controlled groups (within the meaning of Sections 414(b), (c), (m) or (o) of the Internal Revenue Code or Section 4001(b)(1) of Employee Retirement Income Security Act of 1974, as amended ("ERISA"); (c) the cessation of the Debtors' operations, dismissal of employees, or termination (including, without limitation, rejection) of employment or labor agreements (including, without limitation, any collective bargaining agreements), consulting agreements, severance agreements, change-in-control agreements, other similar agreements or pension, welfare, compensation, retention, incentive or other employee benefit plans, agreements, practices, programs, or obligations that might otherwise arise from or pursuant to ERISA, the Fair Labor Standard Act, Title VII of the Civil Rights Act of 1964, the Age Discrimination and Employment Act of 1967, the Federal Rehabilitation Act of 1973, the National Labor Relations Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Worker Adjustment and Retraining Notification Act or otherwise; or (d) workmen's compensation or occupational disease, unemployment, or temporary

disability insurance claims (any agreement, plan, policy, practice, arrangement, or program described in (a) through (d), collectively the "Employee Arrangements"). The Purchaser shall not in any way, as successor or otherwise (including, without limitation, with respect to successor or vicarious liabilities of any kind or character), under any theory of law or equity, be deemed a party to or assignee of any Employee Arrangement, and no employee of the Purchaser shall be deemed in any way covered by or a party to any Employee Arrangement, and all parties to any Employee Arrangement are hereby enjoined from asserting against the Purchaser any and all Interests or Claims arising from or relating to such Employee Arrangement. Any and all notices, if any, required to be given to the Debtors' or their Affiliates' employees pursuant to the Workers Adjustment and Relocation Adjustment Act, or any similar federal, state or other applicable law, shall be the sole responsibility and obligation of the Debtors and its affiliates, and the Purchaser shall have no responsibility or liability therefor. Except as expressly set forth in the APA, the Assets are transferred by the Debtors to the Purchaser free and clear of all Employee Obligations and all Employee Arrangements.

F. Assets Provisions

17. Pursuant to section 363(b) of the Bankruptcy Code, the Debtors are authorized and directed without further order of this Court to sell and transfer the Assets to the Purchaser pursuant to, and in accordance with, the terms and conditions of the APA and this Order and to take any and all actions necessary or appropriate to (a) consummate the Sale contemplated by the APA, pursuant to and in accordance with the terms and conditions of the APA and this Order, (b) transfer and assign all right, title, and interest (including, without limitation, common law rights) to all property, licenses, and rights to be conveyed in accordance with the terms and conditions of the APA, and (c) execute and deliver, perform under, consummate, implement, and close fully

the APA, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the APA and the Sale contemplated by the APA, including, without limitation, any ancillary documents, or as may be reasonably necessary or appropriate to the performance of the obligations as contemplated by the APA and such ancillary documents. For the avoidance of doubt, the Excluded Assets (as defined in the APA) are not included in the Assets.

18. Subject to the entry of this Order and terms and conditions of this Order, the transfer of Assets to the Purchaser pursuant to the APA does not require any consents other than as specifically provided for in the APA and constitutes a legal, valid, and effective transfer of the Assets, and shall vest the Purchaser with all of the right, title, and interest of the Debtors in and to the Assets as set forth in the APA, as applicable, free and clear of all Interests or Claims of any kind or nature whatsoever.

19. To the greatest extent available under applicable law, the Purchaser shall be authorized, as of the Closing Date, to operate under any license, permit, registration, and governmental authorization or approval of the Debtors with respect to the Assets, and all such licenses, permits, registrations, and governmental authorizations and approvals are deemed to have been, and hereby are, authorized to be transferred to the Purchaser as of the Closing Date as provided by the APA. To the extent provided by section 525 of the Bankruptcy Code, no governmental unit may revoke or suspend any license, permit, registration, or governmental authorization or approval relating to the operation of the Assets on account of the filing or pendency of the Bankruptcy Case or the conduct of the Sale contemplated by the APA.

G. Other Provisions

20. The Purchaser shall not be liable for any claims against the Debtors, and the Debtors shall not be liable for any claims against the Purchaser, in each case, other than as expressly provided for in the APA or this Order. The Purchaser shall have no successor liability whatsoever with respect to any Interests or Claims of any nature that may exist against the Debtors, including, without limitation, the Purchaser shall not be, or to be deemed to be: (i) a successor in interest or within the meaning of any law, including any revenue, successor liability, pension, labor, ERISA, bulk-transfer, products liability, tax or environmental law, rule or regulation, or any theory of successor or transferee liability, antitrust, environmental, product line, de facto merger or substantial continuity or similar theories; or (ii) a joint employer, co-employer or successor employer with the Debtors, and the Purchaser shall have no obligation to pay the Debtors' wages, bonuses, severance pay, vacation pay, WARN act claims (if any), benefits or any other payments to employees of the Debtors, including pursuant to any collective bargaining agreement, employee pension plan, or otherwise, except as expressly set forth in the APA.

21. Except as expressly permitted by the APA or this Order, all persons and entities (and their respective successors and assigns) (including, but not limited to, all debt security holders, equity security holders, governmental, tax and regulatory authorities, lenders, trade creditors and other creditors) holding Interests or Claims against, in or with respect to the Debtors or all or any portion of the Assets arising under or out of, in connection with, or in any way relating to the Debtors, the Assets, the operation of the Debtors' businesses, the Sale or the transfer of the Assets to the Purchaser hereby are forever permanently barred, estopped, and enjoined from asserting against the Purchaser or its affiliates, designees, successors or assigns or

any of its respective property or assets (including, but not limited to, the Assets), such persons' or entities' Interests or Claims. This Order is and shall be effective as a determination that all Interests or Claims shall be and are, without further action by any person or entity, released with respect to the Assets as of the Closing. The provisions of this Order authorizing the sale of the Assets free and clear of Interests or Claims shall be self-executing, and neither the Debtors nor the Purchaser shall be required to execute or file releases, termination statements, assignments, consents or other instruments in order to effectuate, consummate and implement the provisions of this Order. The APA and the transaction contemplated thereby shall be of full force and effect, regardless of the Debtors' lack of good standing in any jurisdiction in which such Debtors are formed or authorized to transact business.

22. All persons or entities (including without limitation, all debt security holders, equity security holders, governmental, tax and regulatory authorities, lenders, trade creditors and other creditors) are forever prohibited and permanently enjoined from commencing or continuing in any manner any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral, or other proceeding against the Purchaser, its respective affiliates, designees, successors or assigns, or any of its respective property or assets (including, but not limited to, the Assets), with respect to any (a) Interests or Claims arising under, out of, in connection with or in any way relating to the Debtors, the Assets, or the operation of the Debtors' businesses, or the Sale, or (b) successor liability, including, without limitation, the following actions: (i) commencing or continuing in any manner any action or other proceeding against the Purchaser, its respective affiliates, designees, successors or assigns, or any of its respective property or assets (including, but not limited to, the Assets); (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against the Purchaser, its

respective affiliates, designees, successors or assigns, or any of its respective property or assets (including, but not limited to, the Assets); (iii) creating, perfecting, or enforcing any Interests or Claims against the Purchaser, its respective affiliates, designees, successors or assigns, or any of its respective property or assets (including, but not limited to, the Assets); (iv) asserting any setoff or right of subrogation or recoupment of any kind against any obligation due the Purchaser or its respective affiliates, designees, successors or assigns; (v) commencing or continuing any action, in any manner or place, that does not comply or is inconsistent with the provisions of this Order, all other orders of the Court or the APA; or (vi) revoking, terminating, or failing or refusing to issue or renew any license, permit, or authorization to conduct any of the businesses operated with the Assets.

23. Except for the Assumed Liabilities (as defined in the APA) and as otherwise expressly provided in the APA, the Purchaser is not, by virtue of the consummation of the Sale contemplated the APA, assuming, nor shall it be liable or responsible, as successors or otherwise (including, without limitation, with respect to successor or vicarious liabilities of any kind or character), under any theory of law or equity, including, without limitation, any theory of antitrust, environmental successor or transferee liability, labor law, alter ego, de facto merger or substantial continuity, whether known or unknown, now existing or hereafter raised, which may be asserted or unasserted, fixed or contingent, liquidated or unliquidated with respect to the Debtors or any of its predecessors or affiliates or the obligations of the Debtors or their predecessors or affiliates, for any liabilities, debts, commitments, or obligations (whether known or unknown, disclosed or undisclosed, absolute, contingent, inchoate, fixed, or otherwise) in any way whatsoever relating to or arising from the Assets or the Debtors' operation of its businesses or any such liabilities, debts, commitments, or obligations that in any way whatsoever relate to

periods on or prior to the Closing Date or are to be observed, paid, discharged, or performed on or prior to the Closing Date, or any liabilities calculable by reference to the Debtors or their assets or operations, or relating to continuing conditions existing on or prior to the Closing Date, including, without limitation, with respect to any of the Debtors' predecessors or affiliates, which liabilities, debts, commitments, and obligations are hereby extinguished insofar as they may give rise to successor liability, without regard to whether the claimant asserting any such liabilities, debts, commitments, or obligations has delivered to the Purchaser a release thereof. Without limiting the generality of the foregoing and except for the Assumed Liabilities and as otherwise expressly provided in the APA, by virtue of the consummation of the Sale contemplated by the APA, the Purchaser shall not be liable or responsible, as a successor or otherwise (including, without limitation, with respect to successor or vicarious liabilities of any kind or character) under any theory of law or equity, for the Debtors' liabilities, debts, commitments, or obligations arising under or in connection with: (a) environmental liabilities, debts, claims, or obligations which may be asserted on any basis, including, without limitation, under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq.; (b) any bulk sales or similar law; (c) any liabilities, debts, commitments, or obligations of, or required to be paid by, the Debtors for any Taxes of any kind for any period; (d) any liabilities, debts, commitments, or obligations for any Taxes relating to the Assets for or applicable to the pre-closing period; (e) any litigation; (f) any products liability, other tort, or similar claims, whether pursuant to any state or any federal laws or otherwise, including, without limitation, those arising from products or distribution thereof by or on behalf of Debtors; and (g) any Excluded Liabilities (as defined in the APA).

24. The Purchaser has provided adequate assurance of future performance under the Assigned Contracts and Assumed Leases. The Debtors are authorized to assume and assign to the Purchaser all of the Debtors' right title and interest in the Real Property Leases identified on **Exhibit 3** and the Executory Contracts identified on **Exhibit 4**. The Purchaser is authorized and directed to assume and satisfy the Assumed Liabilities, including the Listed Cure Amounts, as contemplated in the APA.

25. The Debtors' right title and interests in fee in the real estate located at 12800 NW 38th Avenue, Opa Locka, Fl. 330354, are sold and transferred to the Purchaser free and clear of all Claims and Liens, including that certain mortgage in favor of Cooperative Rabobank U.A., New York Branch, in its capacity as Collateral Agent in the original principal amount of \$5,625,000.00, dated October 10, 2018 and recorded in Official Records Book 31192, Page 1797.

26. The Purchaser has given substantial consideration under the APA for the benefit of the holders of any Interests or Claims. The consideration given by the Purchaser shall constitute valid and valuable consideration for the releases of any potential claims of successor liability of the Purchaser, which releases shall be deemed to have been given in favor of the Purchaser by all holders of Interests or Claims against or in the Debtors or any of the Assets.

27. The Purchaser is a party in interest and shall have the ability to appear and be heard on all issues related to or otherwise connected to this Order, the various procedures contemplated herein, any issues related to or otherwise connected to the Sale and/or the APA.

28. Nothing contained in any plan confirmed in the Debtors' chapter 11 cases or any order of this Court confirming such plans or in any other order in the Debtors' cases (including any order entered after any conversion of this case to a case under chapter 7 of the Bankruptcy

Code) shall alter, conflict with, or derogate from, the provisions of the APA or the terms of this Order.

29. The APA and related documents may be modified, amended or supplemented by the parties thereto in accordance with the terms thereof without further order of this Court, provided that no such modification, amendment or supplement that is materially adverse to the Debtors or any other party in interest shall be effective without further order of the Court.

30. This Court shall retain exclusive jurisdiction with regard to all issues or disputes relating to this Order or the APA, including Purchaser's post-Closing obligations under the Assigned Contracts.

31. Notwithstanding Bankruptcy Rules 4001, 6004, 6006, 7062 and 9014, or any other law that might serve to stay or limit the immediate effect of this Order, this Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing. In the absence of any person or entity obtaining a stay pending appeal, the Debtors and the Purchaser are free to perform under the APA at any time, subject to the terms of the APA.

32. To the extent that anything contained in this Order explicitly conflicts with a provision in the APA, this Order shall govern and control.

33. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

34. No bulk sales law, bulk sales tax law or any similar law of any state or other jurisdiction applies in any way to the Sale contemplated by the APA.

35. The automatic stay pursuant to section 362 of the Bankruptcy Code is hereby lifted with respect to the Debtors to the extent necessary, without further order of the Court, (a) to allow the Purchaser to give the Debtors any notice provided for in the APA, (b) to allow the

Purchaser to take any and all actions permitted by the APA in accordance with the terms and conditions thereof, including, without limitation, effectuating the Sale contemplated by the APA and (c) to otherwise implement the terms and provisions of the APA and this Order.

36. This Court shall retain exclusive jurisdiction with regard to all issues or disputes relating to or arising under this Order or the APA, including Purchaser's post-Closing obligations under the Assigned Contracts.

United States Bankruptcy Judge
Sean H. Lane

EXHIBIT 1

Asset Purchase Agreement

ASSET PURCHASE AGREEMENT

among

REPUBLIC METALS CORPORATION (FL) AND REPUBLIC METALS REFINING CORPORATION (FL) (THE “PARENT COMPANIES”) AND THE SUBSIDIARIES OF THE PARENT COMPANIES LISTED ON ANNEX 1 (COLLECTIVELY WITH THE PARENT COMPANIES, THE “SELLERS”)

and

[BUYER] (“BUYER”)

dated as of

December [●], 2018

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ASSET PURCHASE AGREEMENT

PREAMBLE

This Asset Purchase Agreement (this “Agreement”), dated as of December [●], 2018, is entered into among Republic Metals Corporation, a Florida corporation (“RMC”), and Republic Metals Refining Corporation, a Florida corporation (together with RMC, the “Parent Companies”), and the subsidiaries of the Parent Companies listed on Annex 1 (collectively with the Parent Companies, each a “Seller” and collectively, the “Sellers”) and [BUYER] (“Buyer”).

RECITALS

WHEREAS, certain terms used in this Agreement are defined in Section 1.1;

WHEREAS, the Sellers have filed voluntary petitions for relief under Title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (as amended, the “Bankruptcy Code”), on either November 2, 2018 or November 21, 2018, as applicable (collectively, the “Petition Date”), in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) (such cases, collectively, the “Bankruptcy Cases”);

WHEREAS, the Sellers are engaged in the business of owning and operating facilities that offer gold, silver or other precious metals or high-technology metals refining or minting and all currently conducted business activities that are ancillary thereto (the “Business”); and

WHEREAS, subject to the terms and conditions hereof and of the Transaction Documents provided for herein, the Sellers desire to sell, transfer and assign to Buyer, and Buyer desires to purchase, acquire and assume from the Sellers, all of the Assets and Assumed Liabilities (as each such term is defined below);

WHEREAS, the board of managers, managing member, sole shareholder, sole member, or applicable governing body of each Seller has determined that a sale of the assets of its applicable Seller is necessary to maximize value and it is advisable and in the best interests of their respective estates and the beneficiaries of such estates to consummate the transactions provided for herein and has approved this Agreement; and

WHEREAS, the transactions contemplated by this Agreement are subject to the approval of the Bankruptcy Court and will be consummated only pursuant to the Bidding Procedures Order and, if Buyer is the Successful Bidder, in accordance with the Bidding Procedure Order, the Sale Order to be entered by the Bankruptcy Court in the Bankruptcy Cases.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter contained, the Parties hereby agree as follows:

ARTICLE 1

DEFINITIONS

1.1 Definitions.

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

“Action” means (i) any claim, action, cause of action, demand, lawsuit, arbitration, notice of violation, proceeding, litigation, citation or summons or (ii) to the Sellers’ Knowledge, any inquiry, investigation or audit, in each case, whether civil, criminal, administrative, regulatory or otherwise, whether at law or in equity.

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

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

“Alternative Transaction” means a sale of all or substantially all of the Assets to a Person or Persons other than Buyer or an Affiliate of Buyer pursuant to the Auction.

“Amended Leases” means the amended leases for the Leased Real Property substantially in the forms attached hereto as **Exhibit K**.

“Asset Taxes” has the meaning set forth in Section 8.2(b).

“Assets” has the meaning set forth in Section 2.1(b).

“Assigned Contracts” has the meaning set forth in Section 2.1(b)(v).

“Assigned Leases” has the meaning set forth in Section 2.1(b)(ii).

“Assigned Real Property” has the meaning set forth in Section 2.1(b)(i).

“Assignment and Assumption Agreement(s)” means the Assignment and Assumption Agreement(s) in substantially the form attached hereto as **Exhibit F**, evidencing the assignment to and assumption by Buyer of all rights and obligations under the Assigned Contracts.

“Assignment(s) and Bill(s) of Sale” means the Assignment(s) and Bill(s) of Sale in substantially the form attached hereto as **Exhibit J**, evidencing the sale, assignment, conveyance, transfer and delivery to Buyer all of Sellers’ right, title and interest in and to the Assets and Buyer’s assumption of all Assumed Liabilities with respect to such Assets.

“Auction” shall mean the auction as contemplated by the Bidding Procedures Order.

“Avoidance Actions” means all rights, lawsuits, claims, rights of recovery, objections, causes of action, avoidance actions and other similar rights of any Seller arising under Chapter 5 of the Bankruptcy Code (whether or not asserted as of the Closing Date) or comparable state law and all proceeds thereof.

“Backup Bidder” has the meaning set forth in the Bidding Procedures Order.

“Bankruptcy Cases” has the meaning set forth in the Recitals hereto.

“Bankruptcy Code” has the meaning set forth in the Recitals hereto.

“Bankruptcy Court” has the meaning set forth in the Recitals hereto.

“Bidding Procedures Order” means the bidding procedures order of the Bankruptcy Court, dated _____, 2018, entered in the Bankruptcy Cases attached hereto as **Exhibit H**.

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

“Business Day” means any day except Saturday, Sunday or any other day on which commercial banks located in New York, New York are authorized or required by Law to be closed for business.

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

“Buyer Termination Notice” has the meaning set forth in Section 11.1(c)(i).

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 *et seq.*

“Claims” means any claims, damages, actions, suits, causes of action, rights, liens, demands, obligations and/or liabilities, of any nature whatsoever, whether known or unknown, asserted or unasserted, that existed or that may have existed at any time up until the Closing Date.

“Closing” has the meaning set forth in Section 4.1.

“Closing Date” has the meaning set forth in Section 4.1.

“Code” means the Internal Revenue Code of 1986, Title 26 of the United States Code, 26 U.S.C. § 1 *et seq.*, as amended.

“Confidentiality Agreement” has the meaning set forth in Section 12.2.

“Contract” means any contract, indenture, note, bond, lease for personal property or other lease, license, purchase or sale order, warranties, commitments, or other written or oral agreement, but excluding the Leases.

“Cure Amounts” means all amounts, costs and expenses necessary to cure any monetary default as required by Section 365 of the Bankruptcy Code with respect to an Assigned Contract.

“Deed” means the special warranty deed substantially in the form attached hereto as **Exhibit I**.

“Deposit” has the meaning set forth in Section 3.1(a).

“DIP Account” means the segregated debtor-in-possession account opened by Sellers solely for the purpose of the sale of the Assets contemplated by this Agreement.

“Disclosure Schedules” means the Schedules referred to in ARTICLE 5.

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

“Encumbrance” means any charge, claim, community property interest, pledge, condition, equitable interest, lien (statutory or other), option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

“Environmental Attributes” means any emissions and renewable energy credits, energy conservation credits, benefits, offsets and allowances, emission reduction credits or words of similar import or regulatory effect (including emissions reduction credits or allowances under all applicable emission trading, compliance or budget programs, or any other federal, state or regional emission, renewable energy or energy conservation trading or budget program) that have been held, allocated to or acquired for the development, construction, ownership, lease, operation, use or maintenance of any of the Sellers as of: (i) the date of this Agreement; and (ii) future years for which allocations have been established and are in effect as of the date of this Agreement.

“Environmental Claim” means any Action, Governmental Order, lien, fine, penalty, or, as to each, any settlement or judgment arising therefrom, by or from any Person alleging liability of whatever kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resources damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from: (a) the presence, Release of, or exposure to, any Hazardous Materials; or (b) any actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit.

“Environmental Law” means any applicable Law, and any Governmental Order or binding agreement with any Governmental Authority: (a) relating to pollution (or the cleanup thereof) or the protection of natural resources, endangered or threatened species, human health or safety, or the environment (including ambient air, soil, surface water or groundwater, or subsurface strata); or (b) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Materials. The term “Environmental Law” includes, without limitation, the following (including their implementing regulations and any state analogs): the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§

6901 et seq.; the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§ 2601 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. §§ 7401 et seq.; and the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 et seq.

“Environmental Notice” means any written inquiry, written directive, notice of violation or infraction, or notice respecting any Environmental Claim relating to actual or alleged non-compliance with any Environmental Law or any term or condition of any Environmental Permit.

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

“Equipment” has the meaning set forth in Section 2.1(b)(iii).

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

“Excluded Contract” has the meaning set forth in Section 2.2(b).

“Excluded Leases” has the meaning set forth in Section 2.2(c).

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

“Final” means, with respect to an order, judgment or other decree of the Bankruptcy Court or other court of competent jurisdiction, in full force and effect, as to which no appeal is pending and which has not been, and is not subject to being, reversed, stayed, modified or amended; provided, however, that any potential for modification or amendment pursuant to Federal Rules of Bankruptcy Procedure 9023 and/or 9024 or request for stay pending appeal pursuant to Federal Rule of Bankruptcy Procedure 8007 or other similar rule shall not be considered in determining whether an order is Final.

“GAAP” means United States generally accepted accounting principles in effect from time to time.

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

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

“Hazardous Materials” means: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally

occurring or manmade, that is hazardous, acutely hazardous, toxic, or words of similar import or regulatory effect under Environmental Laws; and (b) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation, and polychlorinated biphenyls.

“Indebtedness” of any Person means, without duplication, (i) the principal, interest and premium (if any) in respect of (A) indebtedness of such Person for money borrowed and (B) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable; (ii) all obligations of such Person issued or assumed as the deferred purchase price of property (other than for services or goods acquired in the Ordinary Course of Business), all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement (but excluding trade accounts payable arising in the Ordinary Course of Business); (iii) all obligations of such Person under leases required to be capitalized in accordance with GAAP; (iv) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker’s acceptance or similar credit transaction; (v) all obligations of the type referred to in clauses (i) through (iv) 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; and (vi) all obligations of the type referred to in clauses (i) through (v) of other Persons secured by any Lien on any property or asset of such Person (whether or not such obligation is assumed by such Person).

“Insider” has the meaning set forth in Section 101(31) of the Bankruptcy Code.

“Insurance Policies” has the meaning set forth in Section 5.7.

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

“Intellectual Property Agreements” means all licenses, sublicenses and other agreements by or through which any Person grants to any Seller or any Seller grants to any other Person any exclusive or non-exclusive rights or interests in or to any Intellectual Property that is used exclusively in connection with the Business.

“Intellectual Property Assets” means all Intellectual Property that is owned by any Seller and exclusively used in connection with the Business, including the Intellectual Property Registrations set forth on Schedule 5.6(a).

“Intellectual Property Registrations” means all Intellectual Property Assets that are subject to any issuance, registration, application or other filing by, to or with any Governmental Authority or authorized private registrar in any jurisdiction.

“Inventory” means all of the Sellers’ inventory (including, without limitation, finished goods, merchandise, work in progress, residual by-products, samples, supplies, spare parts, shipping materials, packaging materials, raw materials and other consumables) owned and maintained, held or stored by or for any of the Sellers as of the Closing Date.

“Knowledge of Sellers” or “Sellers’ Knowledge” or any other similar knowledge qualification, means the knowledge of Jason Rubin, David Comite, Zachary Shair, James Gavilan, Luis Pena, Alan Silverstein, Robert Lani, Alex Galguera, JR Rao and Rafael Carbonell, after reasonable inquiry and investigation.

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

“Leases” has the meaning set forth in Section 5.4(b).

“Leased Real Property” means the parcels of real property of which any Seller is the lessee or sublessee (together with all Structures thereon).

“Liability” means any debt, loss, claim (as defined in Bankruptcy Code Section 101(5)), damage, demand, fine, judgment, penalty, liability, or obligation (whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, 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 related thereto (including expenses of legal counsel, experts, engineers and consultants, and costs of investigations).

“Material Adverse Effect” means any fact, condition, change, violation, inaccuracy, circumstance, effect, event, or occurrence that individually or in the aggregate has had, or would be reasonably likely to have, a material adverse change in or material adverse effect on the Assets (excluding the Excluded Assets and the Excluded Liabilities), in each case taken as a whole, but excluding (a) any change or effect to the extent that it results from or arises out of (i) the pendency of the Bankruptcy Case or the financial condition of Sellers; (ii) the execution and delivery of this Agreement or the announcement thereof or consummation of the transactions contemplated hereby; (iii) changes in (or proposals to change) Law, generally accepted accounting principles, or other accounting regulations or principles, or (iv) any action contemplated by this Agreement or taken at the request of Buyer; (b) any change or effect generally applicable to (i) the industries and markets in which Sellers operate or (ii) economic or political conditions or the securities or financial markets in any country or region; (c) any outbreak or escalation of hostilities or war or any act of terrorism; (d) any objections in the Bankruptcy Court to (i) this Agreement and the other Transaction Documents and the transactions contemplated hereby and thereby, (ii) the reorganization of Sellers and any related plan of reorganization or disclosure statement, or (iii) the Bidding Procedures Order or the Sale Motion; (e) the assumption or rejection of any Assigned Contract; (f) any Order of the Bankruptcy Court or any actions or omissions of Sellers in compliance therewith; (g) any loss of accreditation or certification with the London Bullion Market Association or Chicago Mercantile Exchange by any Seller; (h) any action taken by Sellers at the request of, or with the consent of, Buyer; and (i) any of the matters disclosed on any Exhibit, Annex, Schedule, or Disclosure Schedules to this Agreement.

“Ordinary Course of Business” means the ordinary and usual course of operations of the Business (including acts and omissions of Sellers in the ordinary and usual course) through the date hereof, consistent with past practice and operations in a bankruptcy.

“Outside Date” has the meaning set forth in Section 11.1(a)(iii).

“Owned Real Property” has the meaning set forth in Section 5.4(a).

“Parent Companies” has the meaning set forth in the Preamble hereto.

“Party” or “Parties” means, individually or collectively, Buyer and Sellers.

“Paying Party” has the meaning set forth in Section 8.2(c).

“Permits” means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained, or required to be obtained, from Governmental Authorities.

“Permitted Encumbrances” means any (i) items set forth on Schedule [●]; (ii) liens for Taxes not yet due and payable or which are being contested in good faith and by appropriate proceedings; (iii) mechanics, carriers’, workmen’s, repairmen’s or other like liens arising or incurred in the Ordinary Course of Business consistent with past practice or amounts that are not delinquent and which are not, individually or in the aggregate, material to the Business; (iv) easements, rights of way, zoning ordinances and other similar encumbrances affecting Real Property which are not, individually or in the aggregate, material to the Business; or (v) other than with respect to Owned Real Property, liens arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the Ordinary Course of Business consistent with past practice which are not, individually or in the aggregate, material to the Business.

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

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

“Post-Closing Tax Period” means any taxable period beginning after the Closing Date and, with respect to any taxable period beginning before and ending after the Closing Date, the portion of such taxable period beginning after the Closing Date.

“Pre-Closing Tax Period” means any taxable period ending on or before the Closing Date and, with respect to any taxable period beginning before and ending after the Closing Date, the portion of such taxable period ending on and including the Closing Date.

“Previously Omitted Contract” has the meaning set forth in Section 2.1(b)(v).

“Previously Omitted Contract Notice” has the meaning set forth in Section 2.1(b)(v)(1).

“Purchase Price” has the meaning set forth in Section 3.1.

“Real Property” means the Leased Real Property and the Owned Real Property.

“Reimbursing Party” has the meaning set forth in Section 8.2(c).

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

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

“Sale Motion” means the motion or motions, in form and substance reasonably satisfactory to Buyer, filed by Sellers pursuant to, inter alia, Sections 105, 363, and 365 of the Bankruptcy Code seeking entry of the Sale Order and approval of the transactions contemplated by this Agreement.

“Sale Order” means an Order of the Bankruptcy Court, in form and substance approved by Buyer (such approval not to be unreasonably withheld or conditioned so long as the Order is not inconsistent with, and does not limit the rights of Buyer under, this Agreement or the Bidding Procedures Order), pursuant to, inter alia, Sections 105, 363, and 365 of the Bankruptcy Code (a) authorizing and approving, inter alia, the sale of the Assets to Buyer on the terms and conditions set forth herein, free and clear of all Liabilities and Encumbrances (except for the Assumed Liabilities and Permitted Encumbrances), and the assumption and assignment of the Assigned Contracts and Assigned Leases to Buyer, and (b) containing certain findings that (i) Buyer has acted in “good faith” within the meaning of Section 363(m) of the Bankruptcy Code, (ii) the terms of the sale of the Assets are commercially reasonable, (iii) all notification requirements under the Bankruptcy Code have been met, and (iv) the Parties have effectuated a legal transfer of record or title of the Assets. Sellers will cause a proposed version of the Sale Order to be filed with the Bankruptcy Court no later than ten (10) days prior to the hearing on the Sale Motion.

“Security Arrangements” has the meaning set forth in Section 8.5(c).

“Seller Termination Notice” has the meaning set forth in Section 11.1(c)(i).

“Seller(s)” has the meaning set forth in the preamble.

“Sellers’ Obligations” has the meaning set forth in Section 8.5(c).

“Senior Lenders” means, collectively, Coöperatieve Rabobank U.A., New York Branch, Brown Brothers Harriman & Co., Bank Hapoalim B.M., Mitsubishi International Corporation, ICBC Standard Bank Plc, Techemet Metal Trading LLC, Woodforest National Bank and Bank Leumi USA.

“Straddle Period” has the meaning set forth in Section 8.2(b).

“Structures” means, collectively, buildings, structures and fixtures on, and other improvements to, the Real Property, to which any Seller has a fee or leasehold, as applicable, interest.

“Successful Bidder” has the meaning set forth in the Bidding Procedures Order.

“Taxes” means all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

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

“Third Party Consents” have the meaning set forth in Section 5.10.

“Transaction Documents” means this Agreement, the Assignment and Assumption Agreements, the Deed, the Assignments and Bills of Sale, the Amended Leases and any other agreements, instruments, or documents that are to be entered into pursuant to this Agreement.

“Transfer Taxes” has the meaning set forth in Section 8.2(a).

“Transferred Employees” has the meaning set forth in Section 8.6(a).

“Treasury Regulations” means the regulations issued by the IRS and the regulations under Title 26 of the Code of Federal Regulations.

“WARN Act” means the federal Worker Adjustment and Retraining Notification Act of 1988, and similar state, local and foreign laws related to plant closings, relocations, mass layoffs and employment losses.

1.2 Other Definitions and Interpretive Matters.

Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply:

Calculation of Time Period. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a day other than a Business Day, the period in question shall end on the next succeeding Business Day.

Exhibits/Annexes/Schedules/Disclosure Schedules. All Exhibits, Annexes, Schedules and Disclosure Schedules attached or annexed hereto or referred to herein are hereby incorporated in

and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Exhibit, Annex, Schedules or Disclosure Schedule but not otherwise defined therein shall be defined as set forth in this Agreement.

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

Headings. The provision of a table of contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in the construction or interpretation of this Agreement. All references in this Agreement to any “Section” or “Article” are to the corresponding Section or Article of this Agreement unless otherwise specified.

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

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

No Strict Construction. Buyer, on the one hand, and Sellers, on the other hand, participated jointly in the negotiation and drafting of this Agreement, and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by Buyer, on the one hand, and Sellers, on the other hand, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement. Without limitation as to the foregoing, no rule of strict construction construing ambiguities against the draftsman shall be applied against any Person with respect to this Agreement.

ARTICLE 2

PURCHASE AND SALE

2.1 Purchase and Sale.

(a) Upon the terms and subject to the conditions of this Agreement and the Sale Order, on the Closing Date, Sellers (as applicable) shall sell, transfer, assign, convey and deliver, or cause to be sold, transferred, assigned, conveyed and delivered, to Buyer, and Buyer shall purchase from Sellers, free and clear of all Liabilities and Encumbrances (other than the Assumed Liabilities and Permitted Encumbrances), all of Sellers’ right, title, and interest in, to, or under the Assets.

(b) The “Assets” shall include all right, title, and interest of Sellers in, to, or under all properties (other than the Excluded Assets) of every kind and description, wherever located, real, personal or mixed, tangible or intangible, owned, leased or licensed, used or held for use in or relating to the Business including, but not limited to, the following:

(i) the Real Property and Structures thereon more specifically identified on **Exhibit A** attached hereto (the “Assigned Real Property”);

(ii) the leases for the Leased Real Property and Structures thereon described on **Exhibit B** attached hereto (collectively, the “Assigned Leases”);

(iii) all equipment, machinery, furniture, fixtures, Computers and automation equipment, apparatus, appliances, signage, supplies, trucks, trailers, vehicles and other rolling stock not described below in Section 2.2, and other tangible personal property and Structures located on the Assigned Real Property, or used or held for use or obtained in connection with the ownership, operation, use, maintenance or repair of the Business or the Assets, including, without limitation, tanks, plants, buildings, field offices and other structures, fixtures, and other refining facilities (whether installed or not), or processing systems or facilities, meters, machinery, power and other utility lines, telecommunications equipment, central processing equipment, tools, spare parts, warehouse stock, and other appurtenances (collectively, the “Equipment”);

(iv) to the extent transferable pursuant to applicable Law, all Permits required for Sellers to conduct the Business as currently conducted or for the ownership, operation, use, maintenance or repair of the Assets;

(v) those certain Contracts described on **Exhibit C** attached hereto, insofar as they relate to any other Asset, except for any Contracts Buyer, in its sole discretion, instructs Sellers to remove from Exhibit C prior to any hearing before the Bankruptcy Court to approve the Sale Order (collectively, the “Assigned Contracts”). If prior to or following Closing, it is discovered that a Contract should have been listed on **Exhibit C** but was not listed on **Exhibit C** (any such Contract, a “Previously Omitted Contract”), Sellers shall, promptly following the discovery thereof notify Buyer in writing of such Previously Omitted Contract. Buyer shall thereafter deliver written notice to Sellers, no later than five (5) Business Days following notification of such Previously Omitted Contract from Sellers, designating such Previously Omitted Contract as “Assumed” or “Rejected.”

(1) If Buyer designates a Previously Omitted Contract as “Assumed” prior to entry of the Sale Order, (A) **Exhibit C** shall be amended to include such Previously Omitted Contract and (B) Sellers shall serve a notice (the “Previously Omitted Contract Notice”) on the counterparties to such Previously Omitted Contract notifying such counterparties of the Cure Amounts with respect to such Previously Omitted Contract and Sellers’ intention to assume and assign such Previously Omitted Contract in accordance with this Agreement. The Previously Omitted Contract Notice shall provide the counterparties to such Previously Omitted Contract with ten (10) days to object, in writing to Sellers and Buyer, to the Cure Amounts or the assumption of its Contract; and

(2) If the counterparties, Sellers and Buyer are unable to reach a consensual resolution with respect to such objection, or if Buyer designates a Previously Omitted Contract as “Assumed” after entry of the Sale Order, Sellers will file all pleadings required to seek a timely hearing before the Bankruptcy Court to determine the applicable Cure Amounts and approve such assumption and to obtain an order of the Bankruptcy Court fixing the applicable Cure Amounts and approving the assumption of the Previously Omitted Contract and payment by the applicable Seller of such applicable Cure Amount;

(vi) all Intellectual Property Assets (including goodwill associated therewith);

(vii) all books, records, files, invoices, inventory records, product specifications, advertising materials, customer lists, cost and pricing information, supplier lists, business plans, catalogs, customer literature, quality control records and manuals, research and development files, records and laboratory books and credit records of customers (including all data and other information stored on discs, tapes or other media) to the extent used in or to the extent relating to the Assets (including Intellectual Property Assets), Business or operations of the Business of Sellers (collectively, the “Records”);

(viii) all rights of Sellers under or pursuant to all warranties, representations, indemnities, and guarantees made by suppliers, manufacturers, and contractors to the extent relating to property or property sold, or services provided, to Sellers affecting the Assigned Real Property, Assigned Leases, Assigned Contracts, Equipment, or Intellectual Property Assets, excluding only any warranties, representations, indemnities, and guarantees relating to any Excluded Assets;

(ix) all other goodwill and other intangible assets associated with the Assets or the Business of Sellers;

(x) the Inventory specifically identified on **Exhibit D** attached hereto;

(xi) all confidentiality, non-compete, non-disclosure, invention assignment, non-disparagement and similar agreements in favor of any of the Sellers with current or former employees or agents of any such Seller or with third parties; provided, however, that Buyer shall not be deemed to assume any such agreements except to the extent they explicitly become Assigned Contracts under the terms of this Agreement.

provided, however, none of the Parties hereto intends that Buyer, or any of its Affiliates, shall be deemed to be a successor to Sellers with respect to the Assets.

2.2 Excluded Assets.

Notwithstanding the foregoing, the Assets shall not include, and there is excepted, reserved and excluded from the transaction contemplated hereby, the following (collectively, the “Excluded Assets”):

(a) the Purchase Price delivered to Sellers pursuant to this Agreement;

(b) all Real Property and Structures thereon that are not listed on **Exhibit A** attached hereto (the “Excluded Real Property”);

(c) all Leases related to the Assets or the business of Sellers that are not listed on **Exhibit B** attached hereto (the “Excluded Leases”), including without limitation the leases for facilities in Toronto, Canada and Shanghai, China;

(d) all Contracts and agreements related to the Assets or the Business of Sellers that are not listed on **Exhibit C** attached hereto (the “Excluded Contracts”);

(e) all cash and cash equivalents, including checks, commercial paper, treasury bills, certificates of deposit, bank accounts and other bank deposits as of the Closing Date;

(f) all trade credits, accounts receivable, note receivables, and other receivables with respect to any period of time prior to the Closing Date;

(g) all Inventory consisting of or containing precious metals, all hydroxides and all ores and all other Inventory that is not listed on **Exhibit D** attached hereto;

(h) any shares of capital stock or other equity interest of Sellers or any of Sellers' Affiliates or any securities convertible into, exchangeable or exercisable for shares of capital stock or other equity interest of Sellers or any of Sellers' Affiliates;

(i) any confidential personnel and medical records pertaining to any employee of any Seller and its Affiliates, pertaining to any employee who is not a Transferred Employee;

(j) all employee benefit plans

(k) all minute books, stock ledgers, corporate seals and stock certificates of Sellers;

(l) all (i) corporate, financial, Tax and legal records of Sellers that relate to Sellers' business generally (excepting the same to the extent relating to the Assumed Liabilities and the Assets), and (ii) books, records and files that relate to any Excluded Assets;

(m) all rights to any refunds, credits, or rebates of or relating to Taxes (or other related costs or expenses) that are borne by or the responsibility of Sellers or attributable to any Tax asset of Sellers;

(n) any refunds due to any Seller by a third party for any overpayment attributable to the Assets with respect to any period of time on or prior to the Closing Date;

(o) all insurance policies and rights to proceeds thereof;

(p) all prepayments, good faith, and other bid deposits submitted by any third party under the terms of the Bidding Procedures Order;

(q) all Claims other than those specifically constituting Assets;

(r) all Claims against any current or former equityholder, any other Seller or Affiliate of any Seller, or any director, officer, Insider, auditor, insurer, accountant or other retained professional of any Seller (including without limitation any such Claims arising out of or related to any Assigned Contracts, Assigned Leases, or Assigned Real Property);

(s) all Avoidance Actions;

(t) all Claims against any Person arising out of or in connection with any act or omission made by a party identified in Section 2.2(r) prior to the Closing Date;

- (u) all Claims arising under this Agreement or any other Transaction Document;
- (v) all Claims arising under any antitrust laws; and
- (w) the other assets, properties and rights, if any, listed on **Exhibit E** attached hereto.

2.3 Assumed Liabilities.

Upon the terms and subject to the conditions of this Agreement and the Sale Order, on the Closing Date, Buyer shall execute and deliver to Sellers the Assignment and Assumption Agreements, pursuant to which Buyer shall assume and agree to discharge, when due (in accordance with their respective terms and subject to the respective conditions thereof), only the following Liabilities (collectively, the "Assumed Liabilities") and no others:

- (a) all Transfer Taxes;
- (b) any Cure Amounts;
- (c) the Liabilities specifically identified on **Exhibit G** hereto; and
- (d) all other Liabilities related to, or associated with the Assets, but only to the extent arising after the Closing Date.

The assumption by Buyer of the Assumed Liabilities shall not, in any way, enlarge the rights of any third parties relating thereto.

2.4 Excluded Liabilities.

Notwithstanding any provision in this Agreement to the contrary, Buyer shall not assume and shall not be obligated to assume or be obliged to pay, perform, or otherwise discharge any Liability of Sellers, and Sellers shall be solely and exclusively liable with respect to all Liabilities of Sellers, other than the Assumed Liabilities (such Liabilities other than Assumed Liabilities, collectively, the "Excluded Liabilities"), nor shall Buyer be deemed a successor of Sellers with respect to the foregoing. For purposes of clarity, and without limitation of the generality of the foregoing, the Excluded Liabilities shall include, without limitation, each of the following Liabilities of Sellers, other than the Assumed Liabilities:

(a) any Liability of Sellers and their respective Affiliates arising out of, or relating to, this Agreement or the transactions contemplated by this Agreement, whether incurred prior to, at or subsequent to the Closing Date, including, without limitation, all finder's or broker's fees and expenses and any and all fees and expenses of any Representatives of Sellers;

(b) any Liability of Sellers and their respective Affiliates relating to (i) events or conditions occurring or existing in connection with, or arising out of, the business of Sellers as operated prior to the Closing Date, or (ii) the ownership, possession, use, operation, or sale or other disposition prior to the Closing Date of any of the Assets;

(c) any (i) Liability of Sellers or any member of any consolidated, affiliated, combined, or unitary group of which any Seller is or has been a member, for Taxes related to any Pre-Closing Tax Period, and (ii) Taxes related to any Pre-Closing Tax Period of any other Person pursuant to an agreement or otherwise, other than agreements entered into in the Ordinary Course of Business that are not primarily related to Taxes;

(d) Asset Taxes that are the responsibility of Sellers pursuant to Section 8.2;

(e) any Liability incurred by Sellers or its directors, officers, stockholders, agents, or employees (acting in such capacities) after the Closing Date;

(f) any Liability of Sellers and its Affiliates to any Person on account of any Action;

(g) any Liability of Sellers and their respective Affiliates relating to or arising out of an Excluded Asset;

(h) any Liability or obligation of Sellers and their respective Affiliates under any Indebtedness, including, without limitation, any Indebtedness owed to any stockholder or other Affiliate of Sellers, and any Contract evidencing any such financing arrangement unless such Contract is an Assigned Contract;

(i) any Liability of Sellers and their respective Affiliates (i) arising under Environmental Laws attributable to or incurred as a result of any acts, omissions, or conditions occurring or in existence prior to the Closing Date, including, but not limited to, any Liability with respect to the Release, handling, discharge, treatment, storage, generation, disposal, or presence of Hazardous Materials at any location, (ii) claims relating to employee health and safety, including claims for injury, sickness, disease, or death of any Person, or (iii) compliance with any Legal Requirement relating to any of the foregoing;

(j) any fees or expenses of Sellers and their respective Affiliates incurred with respect to the transactions contemplated herein;

(k) any Liability of Sellers and their respective Affiliates relating to any employee or consultant, including, but not limited to any liabilities associated with any compensation plans, wages, benefit plans, pension plans, deferred compensation plans, welfare plans, or similar benefits applicable to any Seller's employees (whether arising prior to or after the Closing); and

(l) any Liability of any Seller under any guarantees of third party obligations by any such Seller (other than Sellers' Obligations or security deposits required with respect to any Assigned Lease) and reimbursement obligations to guarantors of Sellers' obligations or under letters of credit;

(m) all accrued expenses and accounts payables;

(n) drafts or checks outstanding at the Closing;

(o) any Liability for claims of employees;

(p) any Liability or claim based on the WARN Act; and

(q) any Liability to the extent related to the Excluded Assets.

2.5 Assignments, Cure Amounts.

(a) Sellers shall transfer and assign to Buyer all Assigned Contracts and Assigned Leases (and such other Contracts and Leases intended to be Assigned Contracts and Assigned Leases subsequently identified by Buyer after the Closing Date), and Buyer shall assume all Assigned Contracts and Assigned Leases from Sellers, as of the Closing Date pursuant to the Sale Order. In connection with such assignment and assumption, Buyer shall, on or prior to the Closing, pursuant to Section 365 of the Bankruptcy Code and the Sale Order, pay any and all Cure Amounts.

(b) The Sale Order shall provide that as of the Closing, Sellers shall assign to Buyer the Assigned Contracts and the Assigned Leases, and the Assigned Contracts and Assigned Leases shall be identified by the name and date (if available), the counter-party to the Assigned Contract or Assigned Lease, as the case may be, and the address of such counter-party for notice purposes, all included on an exhibit attached to either the motion filed in connection with the Sale Order or a motion for authority to assume and assign such Assigned Contracts and Assigned Leases. Such exhibit shall also (i) set forth the Cure Amounts, and (ii) delineate a procedure for transferring to Buyer the rights to any security deposits in the form of cash or letters of credit on deposit with the counter-party to any Assigned Lease or Assigned Contract.

2.6 Further Assurances.

The Parties agree, prior to and after the Closing, to (a) furnish upon request to each other such further information, (b) execute, acknowledge, and deliver to each other such other documents, and (c) do such other acts and things, all as the other Party may reasonably request, for the purpose of vesting in Buyer title to the Assets, free and clear of all Liabilities and Encumbrances (other than the Assumed Liabilities and Permitted Encumbrances), and for Buyer to assume the Assumed Liabilities, including the Cure Costs, and reasonably necessary to carrying out the intent of this Agreement and the Transaction Documents; *provided, however*, that nothing in this Section 2.6 shall prohibit any Seller from ceasing operations or winding up its affairs following the Closing.

ARTICLE 3

PURCHASE PRICE

3.1 Purchase Price.

The purchase price for the purchase, sale, assignment, and conveyance of Sellers' right, title, and interest in, to, and under the Assets shall consist of the following (collectively, the "Purchase Price"):

(a) cash in an aggregate amount equal to [_____] Dollars (\$[●]), including a cash deposit of [_____] Dollars (\$[●]) (the “Deposit”) that shall have been deposited by Buyer into the DIP Account prior to the execution of this Agreement;¹ plus

(b) the assumption of the Assumed Liabilities, including the Cure Costs.

The cash components of the Purchase Price shall be delivered by Buyer at Closing as set forth in Section 4.2.

3.2 Allocation of Purchase Price.

The Purchase Price shall be allocated among the various Assets, in accordance with the methodology set forth on Schedule 3.2. Sellers and Buyer shall (a) use such allocation for the purpose of making the requisite filings under Section 1060 of the Code, and the regulations thereunder, (b) report, and to cause their respective Affiliates to report, the federal, state and local income and other Tax consequences of the transactions contemplated herein, and in particular to report the information required by Section 1060(b) of the Code, and to jointly prepare Form 8594 (Asset Acquisition Statement under Section 1060 of the Code) as promptly as possible following the Closing Date and in a manner consistent with such allocation, and (c) promptly notify the other of the existence of any Tax audit, controversy or litigation related to such allocation. Notwithstanding the allocation of the Purchase Price agreed between Sellers and Buyer pursuant to this Section 3.2 for the aforementioned Tax purposes, nothing in the foregoing shall be determinative of values ascribed to the Purchased Assets or the allocation of the value of the Purchased Assets for any other purpose.

ARTICLE 4

CLOSING

4.1 Closing Date.

Upon the terms and subject to the conditions hereof, the closing of the sale of the Assets and the assumption of the Assumed Liabilities contemplated hereby (the “Closing”) shall take place at 9:00 a.m., local time at the offices of Akerman LLP, Three Brickell City Centre, 98 Southeast Seventh Street, Suite 1100, Miami, FL 33131, no later than three (3) Business Days following the date on which the conditions set forth in ARTICLE 9 and ARTICLE 10 have been satisfied or, if permissible, waived, excepting the conditions which by their nature are to be satisfied at the Closing, but subject to the satisfaction or, if permissible, waiver of such conditions. The date and time at which the Closing actually occurs is hereinafter referred to as the “Closing Date.”

4.2 Closing Date Payment of Purchase Price.

Subject to satisfaction or, if permissible, waiver of the conditions set forth in ARTICLE 9 and ARTICLE 10, at the Closing, Buyer shall pay, or cause to be paid, the cash components of the

¹ **Note to Draft:** Deposit shall be in an amount equal to twenty percent (20%) of the cash amount.

Purchase Price less the Deposit by wire transfer of immediately available funds to the DIP Account for the benefit of Sellers.

4.3 Buyer's Closing Deliveries.

At the Closing, Buyer shall deliver or cause to be delivered to Sellers (or such other Persons where so designated):

(a) a certificate of the corporate secretary or other applicable officer of Buyer, dated the Closing Date, in form and substance reasonably satisfactory to Sellers, as to (i) Buyer's authorization to execute and perform its obligations under the Transaction Documents to which Buyer is a party; and (ii) incumbency and signatures of the CEO or other authorized officers of Buyer executing the Transaction Documents;

(b) each other Transaction Document to which Buyer is a party, duly executed (and acknowledged, where applicable) by Buyer;

(c) the certificate of Buyer to be received by Sellers pursuant to Section 10.2; and

(d) such other assignments and other good and sufficient instruments of assumption and transfer, in form reasonably satisfactory to Sellers, as Sellers may reasonably request to transfer and assign the Assumed Liabilities to Buyer.

4.4 Sellers' Closing Deliveries.

At the Closing, Sellers shall deliver to Buyer:

(a) the Assignment and Assignment Agreements, duly executed by the applicable Sellers;

(b) the Assignments and Bills of Sale, duly executed by the applicable Sellers;

(c) the Deed, duly executed (and acknowledged) by the applicable Sellers;

(d) the Amended Leases, duly executed by all applicable counterparties to such Amended Leases;

(e) the certificate of Sellers to be received by Buyer pursuant to Section 9.1;

(f) a non-foreign affidavit by each applicable Seller dated as of the Closing Date, sworn under penalty of perjury and in form and substance required under the Treasury Regulations issued pursuant to Code Section 1445, stating that Sellers is not a "foreign person" as defined therein;

(g) evidence of receipt of the Third Party Consents to the extent such consents are not provided for or satisfied in the Sale Order, that have been obtained prior to the Closing Date;

(h) the Records; and

(i) such other bills of sale, deeds, endorsements, assignments and other good and sufficient instruments of conveyance and transfer, in form reasonably satisfactory to Buyer, as Buyer may

reasonably request to vest in Buyer all the right, title and interest of Sellers in, to or under any or all the Assets, each duly executed (and acknowledged, where applicable) by Sellers.

ARTICLE 5

REPRESENTATIONS AND WARRANTIES OF SELLERS

Except as set forth in the correspondingly numbered section and subsection of the Disclosure Schedules, Sellers, jointly and severally, represent and warrant to Buyer that the statements contained in this ARTICLE 5 are true and correct as of the Closing Date:

5.1 Authority; Validity; Consents.

Each of the Parent Companies is a corporation duly organized, validly existing and in good standing under the Laws of the state of Florida and has full corporate power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on its business as it has been and is currently conducted. Each of the other Sellers is an entity of the type and domicile indicated on Schedule 5.1 and is duly organized, validly existing and in good standing under the Laws of its state of domicile and has full power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on its business as it has been and is currently conducted. Subject to requisite Bankruptcy Court approval, each Seller has full power and authority to enter into this Agreement and the other Transaction Documents to which such Seller is a party, to carry out its respective obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. Subject to requisite Bankruptcy Court approval, the execution and delivery by each Seller of this Agreement and any other Transaction Document to which such Seller is a party, the performance by Sellers of their respective obligations hereunder and thereunder and the consummation by Sellers of the transactions contemplated hereby and thereby have been duly authorized by all requisite action on the part of Sellers. This Agreement has been duly executed and delivered by Sellers, and (assuming due authorization, execution and delivery by Buyer and subject to requisite Bankruptcy Court approval) this Agreement will constitute a legal, valid and binding obligation of each Seller enforceable against such Seller in accordance with its terms. When each other Transaction Document to which either Seller is or will be a party has been duly executed and delivered by such Seller (assuming due authorization, execution and delivery by each other party thereto and subject to requisite Bankruptcy Court approval), such Transaction Document will constitute a legal and binding obligation of such Seller enforceable against it in accordance with its terms.

5.2 Subsidiaries.

The Sellers do not own or have any interest in any shares or have an ownership interest in any other Person except for other Sellers that are a party hereto or as set forth on Schedule 5.2 which identifies all subsidiaries of each Seller and which indicates the particular parent corporation and their respective jurisdictions of organization for each such subsidiary.

5.3 No Conflicts; Consents.

Subject to requisite Bankruptcy Court approval, to Sellers' Knowledge, except (a) for entry of the Sale Order, (b) for notices, filings and consents required in connection with the Bankruptcy Case and (c) for the notices, filings and consents set forth on Schedule 5.3, Sellers are not required to give any notice to, make any filing with or obtain any consent from any Person (including any Governmental Authority) in connection with the execution and delivery of this Agreement.

5.4 Encumbrances; Title to Assets; Real Property.

(a) Schedule 5.4 sets forth the legal description and address of each parcel of real property owned by any Seller and used in connection with the Business (such owned parcel of real estate together with all Structures located thereon, the "Owned Real Property").

(b) Schedule 5.4 includes a true, correct and complete list of the Leased Real Property and the leases under which such Leased Real Property is leased, subleased or licensed, including all amendments or modifications to such leases (the "Leases"). The Sellers have delivered to the Buyer true, correct and complete copies of all Leases.

(c) Except as set forth on Schedule 5.4, there are no existing or pending or, to the Knowledge of the Sellers, threatened, condemnation or eminent domain proceedings relating to or affecting any portion of the Real Property.

(d) Except as set forth on Schedule 5.4, to the Knowledge of the Sellers, all Structures on the Real Property (i) comply with valid and current certificates of occupancy or similar permits to the extent required by Law for the use thereof and (ii) conform in all material respects to all applicable Laws. Each parcel of Owned Real Property is zoned for the purposes for which the real estate and Structures thereon have been used in connection with the normal operation of the Business.

(e) No Seller is obligated under or bound by any option, obligation, right of first refusal, purchase contract or other contractual right to sell, lease or purchase any real property or any portions thereof or interests therein. Except as set forth on Schedule 5.4, there are no leases, subleases, licenses, concessions or other Contracts (written or oral) granting any Person or Persons the right to use, possess or occupy any parcel or portion of the Real Property, other than the Leases, easements of record or other Permitted Encumbrances.

(f) Sellers has, and, upon delivery to Buyer on the Closing Date of the instruments of transfer contemplated by ARTICLE 4, and subject to the terms of the Sale Order, Sellers will thereby transfer to Buyer, good and marketable title to, or, in the case of property leased or licensed by Sellers, a valid and subsisting leasehold interest in, or a legal, valid and enforceable licensed interest in or right to use, all of the Assets, free and clear of all Liabilities and Encumbrances, except for the Assumed Liabilities and Permitted Encumbrances.

5.5 Taxes.

(a) Sellers have delivered to Buyer copies of all federal, state, local and non-U.S. income and franchise Tax Returns for all Tax periods ending after December 31, 2015.

(b) Schedule 5.5 sets forth all non-U.S. jurisdictions in which any Seller is subject to Tax, is engaged in business or has a permanent establishment.

5.6 Intellectual Property.

(a) Schedule 5.6(a) lists (i) all Intellectual Property Registrations and (ii) all Intellectual Property Agreements, other than any (a) non-disclosure agreements entered into in the Ordinary Course of Business; (b) non-exclusive licenses of commercially available Intellectual Property licensed to any Seller for internal use on standard terms; and (c) non-exclusive licenses to software and materials licensed as open-source, public-source or freeware. Except as set forth on Schedule 5.6(a), or as would not have a Material Adverse Effect, Sellers own or have the right to use all Intellectual Property Assets and the Intellectual Property licensed to Sellers under the Intellectual Property Agreements.

(b) Except as set forth on Schedule 5.6(b), or as would not have a Material Adverse Effect, to Sellers' Knowledge: (i) the conduct of the Business as currently conducted does not infringe or otherwise violate the Intellectual Property of any Person; and (ii) no Person is infringing, misappropriating or otherwise violating any Intellectual Property Assets.

5.7 Insurance.

Schedule 5.7 sets forth a true and complete list of all current policies or binders of fire, liability, product liability, umbrella liability, real and personal property, workers' compensation, vehicular, directors' and officers' liability, fiduciary liability and other casualty and property insurance maintained by any of the Sellers and relating to the assets, business, operations, employees, officers and directors of any such Seller (collectively, the "Insurance Policies") and true and complete copies of such Insurance Policies have been made available to Buyer.

5.8 Compliance with Legal Requirements.

To Sellers' Knowledge, each Seller is in material compliance with all material Legal Requirements of any Governmental Authorities applicable to such Seller, or to the conduct or operation of its Business, or the ownership or use of any of its assets.

5.9 Permits.

To Sellers' Knowledge, Schedule 5.9 contains a complete and accurate list of all material Permits required for Sellers to conduct the Business as currently conducted or for the ownership and use of the Assets.

5.10 Consents and Approvals.

To Sellers' Knowledge, each material consent, waiver, authorization or approval of any Governmental Authority, or of any other Person, and each declaration to or filing or registration with any such Governmental Authority, that is required in connection with the execution and delivery of this Agreement and the Transaction Documents by Sellers or the performance by Sellers of their obligations thereunder (the "Third Party Consents") is set forth accurately and completely on Schedule 5.10.

5.11 Legal Proceedings; Government Orders.

(a) Except for the Bankruptcy Cases and as set forth on Schedule 5.11(a), (a) there are no Actions pending or, to Sellers' Knowledge, threatened (a) against or by any Seller affecting any of its properties or assets (or by or against any Sellers or any Affiliate thereof and relating to any Seller); or (b) against or by any Seller or any Affiliate of any Seller that challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement.

(b) Except as set forth on Schedule 5.11(b), there are no outstanding Governmental Orders specifically applicable to any Seller against or affecting any Seller or any of its properties or assets. Each such Seller is in compliance with the terms of each Governmental Order set forth on Schedule 5.11(b). No event has occurred or circumstances exist that may constitute or result in (with or without notice or lapse of time) a violation of any such Governmental Order.

5.12 Employees.

Schedule 5.12 contains a list of all persons who are employees, independent contractors or consultants of any Seller as of the date hereof, and sets forth for each such individual the following: (i) name; (ii) title or position (including whether full or part time); (iii) hire date; (iv) current annual base compensation rate; (v) commission, bonus or other incentive-based compensation; and (vi) a description of the fringe benefits provided to each such individual as of the date hereof.

5.13 Environmental Matters.

(a) Except as set forth on Schedule 5.13(a), each Seller is currently and has been in material compliance with all Environmental Laws and has not received from any Person and there is no: (i) Environmental Notice or Environmental Claim; or (ii) written request for information pursuant to Environmental Law, which, in each case, either remains pending or unresolved, or is the source of ongoing obligations or requirements as of the Closing Date.

(b) Except as set forth on Schedule 5.13(b), each Seller has obtained and is in compliance with all material Environmental Permits (each of which is disclosed on Schedule 5.13(b)) necessary for the ownership, lease, operation or use of the Business or assets of such Seller and all such Environmental Permits are in full force and effect and shall be maintained in full force and effect by Sellers through the Closing Date in accordance with Environmental Law, and there is no condition, event or circumstance that might materially prevent or impede, after the Closing Date, the ownership, lease, operation or use of the business or assets of any Seller as currently conducted.

(c) Except as set forth on Schedule 5.13(c), none of the Owned Real Property or, to the Knowledge of the Sellers, the Leased Real Property or any real property formerly owned, operated or leased by any Seller is listed on, or has been proposed for listing on, the National Priorities List (or CERCLIS) under CERCLA, or any similar state list.

(d) Except as set forth on Schedule 5.13(d), there has been no Release of Hazardous Materials in material violation of Environmental Law with respect to the Business or assets of any Seller or the Owned Real Property or, to the Knowledge of the Sellers, the Leased Real Property or any real property formerly owned, operated or leased by any Seller, and neither any such Seller

nor Sellers have received an Environmental Notice that any such real property (including soils, groundwater, surface water, buildings and other structure located on any such real property) has been contaminated with any Hazardous Material, which could reasonably be expected to result in an Environmental Claim against, or a material violation of Environmental Law or termination or suspension of any Environmental Permit, which is not the subject of any environmental response, assessment, investigation or remediation activities by Sellers.

(e) Schedule 5.13(e) contains a complete and accurate list of all active, abandoned or removed aboveground or underground storage tanks owned or operated by any Seller.

(f) Schedule 5.13(f) contains a complete and accurate list, to the Knowledge of Sellers', of all off-site Hazardous Materials treatment, storage, or disposal facilities or locations used by any Seller or Sellers and any predecessors. Except as set forth on Schedule 5.13(f), (i) none of these facilities or locations has been placed or proposed for placement on the National Priorities List (or CERCLIS) under CERCLA, or any Governmental Authority list, and (ii) neither Sellers nor any such Seller has received any Environmental Notice regarding potential liabilities with respect to such off-site Hazardous Materials treatment, storage, or disposal facilities or locations used by a Company or Sellers.

(g) Except as set forth on Schedule 5.13(g), neither Sellers nor any Seller has retained or assumed, by contract or operation of Law, any liabilities or obligations of third parties under Environmental Law.

(h) Sellers have provided or otherwise made available to Buyer and listed on Schedule 5.13(g): (i) any and all material, non-privileged environmental reports, studies, audits, records, sampling data, site assessments, risk assessments and other similar documents with respect to the business or assets of any Seller or any currently or formerly owned, operated or leased real property, which are in the possession or control of the Sellers or any Seller, related to compliance with Environmental Laws, Environmental Claims or an Environmental Notice or the Release of Hazardous Materials; and (ii) any and all material documents concerning planned or anticipated capital expenditures required to reduce, offset, limit or otherwise control pollution and/or emissions, manage waste or otherwise cause or ensure compliance with current or reasonably anticipated future Environmental Laws (including, without limitation, costs of remediation, pollution control equipment and operational changes).

(i) Except as set forth on Schedule 5.13(i), to Sellers' Knowledge, there is no condition, event or circumstance concerning the Release or regulation of Hazardous Materials that might, after the Closing Date, materially prevent, impede or increase the costs associated with the ownership, lease, operation, performance or use of the Business or assets of any of the Sellers as currently conducted.

(j) One or more of the Sellers owns and controls all Environmental Attributes (a complete and accurate list of which is set forth on Schedule 5.13(j)) and no such Seller has entered into any contract or pledge to transfer, lease, license, guarantee, sell, mortgage, pledge or otherwise dispose of or encumber any Environmental Attributes as of the date hereof. There is no condition, event or circumstance that might materially prevent, impede or increase the costs associated with the transfer (if required) to Buyer of any Environmental Attributes after the Closing Date.

5.14 Brokers or Finders.

Except with regard to SSG Capital Advisors, LLC as provided in Section 12.9, Sellers have not incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement, the other Transaction Documents or the transactions contemplated hereby or thereby for which Buyer is or will become liable, and Sellers shall indemnify and hold harmless Buyer from any claims with respect to any such fees or commissions.

ARTICLE 6

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Sellers as follows:

6.1 Organization and Good Standing.

Buyer is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of [●]. Buyer has the requisite power and authority to own or lease and to operate and use its properties and to carry on its business as now conducted.

6.2 Authority; Validity; Consents.

Buyer has the requisite power and authority necessary to enter into and perform its obligations under this Agreement, and the other Transaction Documents to which it is a party, and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance of this Agreement by Buyer, and the consummation by Buyer of the transactions contemplated herein, have been duly and validly authorized by all requisite limited liability company or corporate actions in respect thereof. This Agreement has been duly and validly executed and delivered by Buyer, and each other Transaction Document to which Buyer is a Party will be duly and validly executed and delivered by Buyer, as applicable, at the Closing. This Agreement, and the other Transaction Documents to which Buyer is a party, constitute the legal, valid, and binding obligation of Buyer, enforceable against Buyer in accordance with their respective terms, except in each case as such enforceability is limited by bankruptcy, insolvency, reorganization, moratorium, or similar laws now or hereafter in effect relating to creditors' rights generally or general principles of equity. Buyer is not or will not be required to give any notice to or obtain any consent from any Person in connection with the execution and delivery of this Agreement and the other Transaction Documents to which it is a Party, or the consummation or performance of any of the transactions contemplated hereby or thereby, except for such notices, filings and consents, the failure of which to provide, make or obtain, would not, individually or in the aggregate, affect Buyer's ability to perform its obligations under this Agreement, or any other Transaction Documents, or to consummate the transactions contemplated hereby or thereby.

6.3 No Conflict.

When the consents and other actions described in Section 6.2 have been obtained and taken, the execution and delivery of this Agreement, and the other Transaction Documents, and the consummation of the transactions provided for herein and therein will not result in the breach of

any of the terms and provisions of, or constitute a default under, or conflict with, or cause any acceleration of any obligation of Buyer under (a) any agreement, indenture, or other instrument to which it is bound, (b) the certificate of formation of Buyer, as applicable, (c) any Order, or (d) any Legal Requirement.

6.4 Availability of Funds.

As of the Closing, Buyer will have sufficient cash in immediately available funds (without giving effect to any unfunded financing, regardless of whether any such financing is committed) to pay the Purchase Price, all costs, fees, and expenses to be paid by Buyer that are necessary to consummate the transactions contemplated by this Agreement and the other Transaction Documents, and assume the Assumed Liabilities.

6.5 Litigation.

There are no Actions pending or, to the Knowledge of Buyer, threatened, that would affect Buyer's ability to perform its obligations under this Agreement, or any other Transaction Documents, or to consummate the transactions contemplated hereby or thereby.

6.6 Brokers or Finders.

Neither Buyer nor any Person acting on behalf of Buyer has paid or become obligated to pay any fee or commission to any broker, finder, investment banker, agent or intermediary for or on account of the transactions contemplated by this Agreement for which any Sellers is or will become liable, and Buyer shall hold harmless and indemnify Sellers from any claims with respect to any such fees or commissions.

ARTICLE 7

ACTIONS PRIOR TO THE CLOSING DATE

7.1 Operations Prior to the Closing Date.

Sellers covenant and agree that, except (v) as expressly contemplated by this Agreement, (w) as disclosed on Schedule 7.1, (x) with the prior written consent of Buyer (which consent shall not be unreasonably withheld, conditioned or delayed), and (y) as otherwise required by Legal Requirements, after the execution of this Agreement and prior to the Closing Date:

(a) Each Seller shall:

(i) use commercially reasonable efforts, taking into account Sellers' status as debtor-in-possession, to maintain the Assets;

(ii) maintain its books, accounts, and Records in accordance with past custom and practice;

(iii) maintain the personal property comprising part of the Assets operated by any Seller in at least as good a condition as it is on the date hereof, subject to ordinary wear and tear;

(iv) use commercially reasonable efforts, taking into account Sellers' status as debtor-in-possession, to obtain all Third Party Consents to the extent such consents are not provided for or satisfied by the Sale Order;

(v) maintain (including necessary renewals thereof) insurance policies against risk and Liabilities, to the extent and in the manner, and at the levels maintained by Sellers as of the date hereof, with respect to its business and the Assets; and

(vi) use commercially reasonable efforts, taking into account Sellers' status as debtor-in-possession, to (A) retain its employees who are in good standing and are necessary to conduct the business as it is currently being conducted immediately prior to the date hereof and (B) maintain their relationships with and preserve the goodwill of its key service providers.

(b) Sellers shall not:

(i) abandon any Asset, other than Excluded Assets;

(ii) terminate, reject, cancel, or materially amend or modify any Assigned Contract or Assigned Lease;

(iii) sell, lease, encumber, or otherwise dispose of all or any portion of any Assets, other than Excluded Assets;

(iv) grant to any Transferred Employee any increase in compensation; or

(v) enter into any agreement or commitment to take any action prohibited by this Section 7.1.

7.2 Commercially Reasonable Efforts.

Sellers, on the one hand, and Buyer, on the other hand, shall, before and after Closing, use commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other in doing, all things necessary, proper, or advisable to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated hereby, including using commercially reasonable efforts to accomplish the following: (a) the taking of all reasonable acts necessary to cause the conditions precedent set forth in ARTICLE 9 and ARTICLE 10 to be satisfied, (b) the obtaining, at the earliest practicable date, of all necessary approvals and authorizations from Governmental Authorities, and the making of all necessary registrations, declarations, and filings (including registrations, declarations and filings with Governmental Authorities, if any), and the taking of all reasonable steps as may be necessary to avoid any Action by any Governmental Authority, and (c) the execution or delivery of any additional instruments necessary to consummate the transactions contemplated hereby and to fully carry out the purposes of this Agreement.

7.3 Bankruptcy Court Approval.

(a) Sellers and Buyer acknowledge that this Agreement, the sale of the Assets, and the assumption and assignment of the Assigned Contracts and the Assigned Leases are subject to Bankruptcy Court approval as set forth in the Bidding Procedures Order.

(b) In the event an appeal is taken or a stay pending appeal or reconsideration is requested regarding either the Bidding Procedures Order or the Sale Order, Sellers shall promptly notify Buyer of such appeal or stay or reconsideration request and shall provide to Buyer promptly a copy of the related pleadings. Sellers shall also provide Buyer with written notice of any motion or application filed in connection with any appeal from or request for reconsideration of either of such Orders.

7.4 Bidding Procedures.

The bidding procedures to be employed with respect to this Agreement shall be those reflected in the Bidding Procedures Order. Buyer agrees and acknowledges that Sellers and their respective Representatives and Affiliates are and may continue soliciting inquiries, proposals, or offers from third parties (the "Potential Bidders") for any and all of the Assets in connection with any Alternative Transaction pursuant to the terms of the Bidding Procedures Order.

7.5 Bankruptcy Filings.

From and after the date of execution of this Agreement and until the Closing Date, Sellers shall use commercially reasonable efforts to deliver to Buyer copies of all pleadings, motions, notices, statements, schedules, applications, reports, and other papers that relate, in whole or in part, to this Agreement and the transactions contemplated hereby, or to Buyer or its respective agents or Representatives, that are to be filed by Sellers in the Bankruptcy Case in advance of their filing, in each case, if reasonably practicable under the circumstances before the filing of such papers. Notwithstanding the foregoing, neither Sellers' inadvertent failure to comply with this Section 7.5, nor Sellers' unintentional failure to comply with this Section 7.5, shall constitute a breach under this Agreement.

7.6 Access to Buyer Documentation.

On or before five (5) Business Days prior to the Auction, Buyer shall have delivered to Sellers true and complete, fully-executed copies of (a) Buyer's certificate of formation, and (b) any agreements with a third Person relating to, directly or indirectly, the Auction and/or Buyer's (or Buyer's Representatives') participation therein. All such information obtained or reviewed by Sellers shall be maintained confidential by Sellers and shall be governed by the terms of the Confidentiality Agreement.

ARTICLE 8

ADDITIONAL AGREEMENTS²

8.1 Governmental Approvals and Consents.

(a) Each party hereto shall, as promptly as possible, (i) make, or cause or be made, all filings and submissions required under any Law applicable to such party or any of its Affiliates; and (ii) use commercially reasonable efforts to obtain, or cause to be obtained, all consents, authorizations, orders and approvals from all Governmental Authorities that may be or become necessary for its execution and delivery of this Agreement and the performance of its obligations pursuant to this Agreement and the other Transaction Documents. Each party shall cooperate fully with the other party and its Affiliates in promptly seeking to obtain all such consents, authorizations, orders and approvals.

(b) Sellers and Buyer shall use commercially reasonable efforts to give all notices to, and obtain all consents from, all third parties that are described in the Disclosure Schedules.

(i) Without limiting the generality of the parties' undertakings pursuant to subsections (a) and (b) above, each of the parties hereto shall use all commercially reasonable efforts to:

(ii) respond to any inquiries by any Governmental Authority regarding antitrust or other matters with respect to the transactions contemplated by this Agreement or any Transaction Document;

(iii) avoid the imposition of any order or the taking of any action that would restrain, alter or enjoin the transactions contemplated by this Agreement or any Transaction Document; and

(iv) in the event any Governmental Order adversely affecting the ability of the parties to consummate the transactions contemplated by this Agreement or any Transaction Document has been issued, to have such Governmental Order vacated or lifted.

(c) If any consent, approval or authorization necessary to preserve any right or benefit under any Contract to which any Seller is a party is not obtained prior to the Closing, Sellers shall, subsequent to the Closing, use commercially reasonable efforts to cooperate with Buyer and such Seller in attempting to obtain such consent, approval or authorization as promptly thereafter as practicable.

(d) Notwithstanding the foregoing, nothing in this Section 8.1 shall require, or be construed to require, Buyer or any of its Affiliates to agree to (i) sell, hold, divest, discontinue or limit, before or after the Closing Date, any assets, businesses or interests of Buyer, any Seller or any of their respective Affiliates; (ii) any conditions relating to, or changes or restrictions in, the

² **Note to Draft:** Sellers are willing to discuss the inclusion of a Transition Services Agreement to the extent Buyer will require the provision of transition services. To the extent a Transition Services Agreement is desired, the agreement shall be annexed to this Agreement as an Exhibit.

operations of any such assets, businesses or interests which, in either case, could reasonably be expected to result in a Material Adverse Effect or materially and adversely impact the economic or business benefits to Buyer of the transactions contemplated by this Agreement; or (iii) any material modification or waiver of the terms and conditions of this Agreement.

8.2 Taxes.

(a) Any transfer, documentary, sales, use, stamp, registration and other such Taxes, and all conveyance fees, recording charges and other fees and charges (including any penalties and interest) incurred in connection with the consummation of the transactions contemplated by this Agreement (collectively, the “Transfer Taxes”) shall be borne by Buyer. Sellers and Buyer shall use commercially reasonable efforts and cooperate in good faith to exempt the sale and transfer of the Assets from any Transfer Taxes, including under Section 1146(a) of the Bankruptcy Code. Buyer will, at its own expense, file all necessary Tax Returns and other documentation with respect to all Transfer Taxes, and, if required by applicable law, the Parties will, and will cause their Affiliates to, join in the execution of any such Tax Returns and other documentation.

(b) Sellers shall retain responsibility for, and shall bear and pay, all real and personal property ad valorem, property, excise or similar Taxes based upon operation or ownership of the Assets (but excluding, for the avoidance of doubt, income taxes, franchise taxes and Transfer Taxes) (collectively, the “Asset Taxes”) assessed with respect to the Assets for any period ending on or prior to the Closing Date. Buyer shall assume responsibility for, and shall bear and pay, all Asset Taxes assessed with respect to the Assets for any period after the Closing Date. All Asset Taxes for any taxable period that includes the Closing Date and ends after the Closing Date (a “Straddle Period”) shall be borne and prorated between Sellers and Buyer based on a fraction (a) the numerator of which is (i) in the case of Sellers, the number of days in the Straddle Period through and including the Closing Date, or (ii) in the case of Buyer, the number of days in the Straddle Period beginning 12:01 a.m. (local Miami, Florida time) on the day after the Closing Date, and (b) the denominator of which is the total number of days in the entire Straddle Period. Buyer will, at its own expense, file all necessary Tax Returns and other documentation with respect to all Asset Taxes for Straddle Periods with the prior consent of Sellers (not to be unreasonably withheld, conditioned or delayed) and, if required by applicable law, the Sellers and Buyer will, and will cause their Affiliates to, join in the execution of any such Tax Returns and other documentation. If the exact amount of any Asset Taxes is not known as of the Closing Date, the apportionment shall be based upon a reasonable amount agreed to by the Parties without subsequent adjustment.

(c) Sellers, on the one hand, or Buyer, on the other hand, as the case may be (the “Reimbursing Party”), shall provide reimbursement for any Tax paid by the other (the “Paying Party”) all or a portion of which is the responsibility of the Reimbursing Party in accordance with the terms of this Section 8.2 or which represents an overpayment for Taxes by the Paying Party. Within a reasonable time prior to the payment of any such Tax, the Paying Party shall give notice to the Reimbursing Party of the Tax payable and the Paying Party’s and Reimbursing Party’s respective Liability therefor, although failure to do so will not relieve the Reimbursing Party from its Liability hereunder except to the extent the Reimbursing Party is prejudiced thereby. Any amounts which may become payable from any Seller to Buyer pursuant to this Section 8.2 shall constitute a super priority administrative expense of Sellers under Section 364(c)(1) of the

Bankruptcy Code with priority over any and all administrative expenses of the kind specified in Sections 503(b) or 507(b) of the Bankruptcy Code.

(d) Buyer and Sellers agree to furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance relating to the Assets (including access to books and records and Tax Returns and related working papers dated before Closing) as is reasonably necessary for the filing of all Tax Returns, the making of any election relating to Taxes, the preparation for any audit by any taxing authority, the prosecution or defense of any claims, suit or proceeding relating to any Tax, and the claiming by Buyer of any federal, state or local business tax credits or incentives that Buyer may qualify for in any of the jurisdictions in which any of the Assets are located; *provided, however*, that neither Buyer nor Sellers shall be required to disclose the contents of its income Tax Returns to any Person. Any expenses incurred in furnishing such information or assistance pursuant to this Section 8.2 shall be borne by the Party requesting it.

8.3 Bulk Sales.

Buyer and Sellers hereby waive compliance with all “bulk sales,” “bulk transfer,” and similar laws that may otherwise be applicable with respect to the sale and transfer of any or all of the Assets to Buyer.

8.4 Payments Received.

Sellers, on the one hand, and Buyer, on the other hand, each agree that, after the Closing, each will hold and will promptly transfer and deliver to the other, from time to time as and when received by them, any cash, checks with appropriate endorsements (using their commercially reasonable efforts not to convert such checks into cash) or other property that they may receive on or after the Closing which properly belongs to the other and will account to the other for all such receipts.

8.5 Assigned Contracts and Assigned Leases.

(a) With respect to each Assigned Contract and each Assigned Lease, Buyer shall provide adequate assurance as required under the Bankruptcy Code of the future performance by Buyer of each such Assigned Contract and Assigned Lease. Buyer and Sellers agree that they will promptly take all actions reasonably required to assist in obtaining a Bankruptcy Court finding that there has been an adequate demonstration of adequate assurance of future performance under the Assigned Contracts and Assigned Leases, such as furnishing timely requested and factually accurate affidavits, non-confidential financial information, and other documents or information for filing with the Bankruptcy Court and making Buyer’s and Sellers’ employees and Representatives available to testify before the Bankruptcy Court.

(b) Buyer shall pay, perform or satisfy the Assumed Liabilities from time to time, and as such Assumed Liabilities become due and payable or are required to be performed or satisfied in accordance with their respective terms.

(c) Without limiting the provisions of this Section 8.5, Buyer acknowledges that various bonds, surety bonds, letters of credit, guarantees, and/or cash deposits, including those

set forth on Schedule 8.5 (collectively the “Security Arrangements”) have been provided by Sellers and/or their respective Affiliates to secure the payment and/or performance of certain of Sellers’ obligations related to the Assets. Buyer acknowledges that Sellers have no duty to maintain any Security Arrangements after the Closing. To the extent Sellers and/or any of their respective Affiliates have any obligations pursuant to any Security Arrangement or have pledged or otherwise provided any property that secures any such Security Arrangement (collectively, the “Sellers’ Obligations”), Buyer shall take such actions as are necessary to cause the Sellers’ Obligations arising under the Security Arrangements set forth on Schedule 8.5 (and such Security Arrangements) to be released and terminated, and any of Sellers’ property pledged or otherwise provided to secure such Security Arrangements returned to Sellers, concurrent with the Closing. As to those Security Arrangements not listed on Schedule 8.5, Buyer shall take such actions as are necessary to cause the Sellers’ Obligations arising under such Security Arrangements (and such Security Arrangements) to be released and terminated, and any of Sellers’ property pledged or otherwise provided to secure such Security Arrangements returned to Sellers, within thirty (30) days following Sellers’ notifying Buyer (or if earlier, Buyer’s otherwise becoming aware) of such Security Arrangement, and Buyer shall reimburse Sellers, within ten (10) days following Sellers’ demand therefor, the aggregate amount of any Sellers’ Obligations that are paid or performed by Sellers under such Security Arrangements following the Closing.

8.6 Employee Matters.

(a) Buyer intends to offer employment effective as of the Closing Date to those employees whose jobs are listed on Schedule 8.6 (if any) at the same or similar location, with the same title and job responsibilities, at a rate of pay no less favorable than immediately prior to the Closing Date, and with terms and conditions of employment (including employment benefits and perquisites), in the aggregate, as provided by Buyer to its similarly situated employees. The employees who accept Buyer’s offer of employment made pursuant to this Section 8.6 and commence working for Buyer on the Closing Date are referred to herein as “Transferred Employees.” Buyer shall have no obligation or Liability for any back pay, accrued benefits, or similar claims of any Transferred Employees. Each other employee of Sellers and their Affiliates, including those who are not active employees as of the Closing Date, shall remain the sole responsibility of Sellers, and their Affiliates, as applicable. All Buyer’s decisions to offer or not offer employment to employees listed on Schedule 8.6 shall be in accordance with all applicable Legal Requirements.

(b) Buyer shall have no obligation to provide any severance, payments, or benefits to any employees of Sellers and their Affiliates. Sellers acknowledges that Sellers and their Affiliates, as applicable, are alone responsible for (i) issuing, serving, and delivering all orders and notices required, if any, pursuant to applicable Legal Requirements, in connection with the termination of employees or contractors, and (ii) any financial obligations and Liabilities in connection therewith or otherwise required in connection with the termination of such employees or contractors.

8.7 Permits.³

Sellers shall use commercially reasonable efforts prior to and after the Closing to assist Buyer in transferring the Permits, to the extent permitted by applicable Legal Requirements. Sellers agree to use commercially reasonable efforts to assist Buyer to obtain such Permits after Closing.

8.8 Post-Closing Books and Records, Personnel, and Services.

(a) Until the later of (i) five (5) years after the Closing Date or (ii) the date of entry of a final decree closing each Bankruptcy Case (or such longer period as may be required by any Governmental Authority or ongoing claim), (a) Buyer shall, at its own expense, preserve and not dispose of or destroy any of the Records, files, or other information received from Sellers, and (b) Buyer shall allow Sellers, any trust established under a chapter 11 plan of Sellers or otherwise or any other successor of a Seller (each a "Seller or Successor"), Senior Lenders, and any of their respective directors, officers, employees, counsel, representatives, accountants and auditors reasonable access during normal business hours, upon reasonable advance notice, to all employees and any files, books, Records and other materials, for purposes relating to the Bankruptcy Case, the wind-down of the operations of Sellers, the marketing and sale of the Excluded Assets, reconciling claims filed in the Bankruptcy Case, prosecuting or defending any Claims or insurance claims, the filing of tax returns, or any other reasonable purposes (collectively, the "Winddown Requirements"), and any Seller or Successor or Senior Lender and such directors, officers, employees, counsel, representatives, accountants and auditors shall have the right to make copies of any such files, books, Records and other materials. Until the closing of the Bankruptcy Case or the liquidation and winding up of Sellers' estates, Sellers shall preserve and keep the records relating to the Business that were not part of the Assets and shall make such records and Sellers' personnel available to Buyer as may be reasonably required by Buyer in connection with, among other things, any insurance claims by, Actions or Tax audits against, or governmental investigations of, Buyer or any of its Affiliates or in order to enable Buyer to comply with its obligations under this Agreement and each other Transaction Document. In the event any Seller desires to destroy any such records during or after the time during which they must be maintained pursuant to this Section 8.8, such Seller shall seek, on written notice to Buyer, and obtain an Order of the Bankruptcy Court; provided, however, that such Order will provide that the Buyer shall have the right at its option and its expense to take possession of the records within one hundred and eighty (180) days after the date of such Order.

(b) Until the later of (i) five (5) years after the Closing Date or (ii) the date of entry of a final decree closing each Bankruptcy Case (or such longer period as may be required by any Governmental Authority or ongoing claim), Buyer, at Buyer's expense (other than with respect to documented reasonable out-of-pocket expenses incurred by Buyer), agrees to make personnel reasonably available to any Seller or Successor or Senior Lender (or their agents or representatives) as may be requested by the Seller or Successor or Senior Lender at

³ **Note to Draft:** Sellers are willing to discuss the inclusion of a Transition Services Agreement with respect to the Permits as necessary to enable Buyer to operate the Assets. To the extent a Transition Services Agreement is desired, the agreement shall be annexed to this Agreement as an Exhibit.

reasonable times, with reasonable prior notice, and with the Seller or Successor or Senior Lender using reasonable efforts to minimize any disruptions to Buyer's business, in connection with, among other things, the Winddown Requirements or in order to enable Sellers to comply with their obligations under this Agreement and the other Transaction Documents. Notwithstanding the foregoing, (a) Buyer shall not be required to pay any out-of-pocket expenses from its own funds in order to provide the service contemplated by this Section 8.8(b) and (b) to the extent any Seller or Successor or Senior Lender pays the amount of such out-of-pocket expenses to Buyer in advance of incurring such expenses, Buyer shall pay, or cause to be paid, such amounts to the applicable service provider. Buyer understands that making personnel reasonably available to any Seller or Successor or Senior Lender pursuant to this Section 8.8(b) includes making personnel available to respond to participate in interviews and/or to provide testimony (including deposition testimony).

8.9 No Other Representations or Warranties; Disclaimers.

(a) NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, EXCEPT AS AND TO THE EXTENT EXPRESSLY SET FORTH IN THIS AGREEMENT AND IN THE TRANSACTION DOCUMENTS, SELLERS MAKE NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, AND DISCLAIMS ALL LIABILITY AND RESPONSIBILITY FOR ANY REPRESENTATION, WARRANTY, STATEMENT OR INFORMATION MADE OR COMMUNICATED (ORALLY OR IN WRITING) TO BUYER (INCLUDING ANY OPINION, INFORMATION, OR ADVICE THAT MAY HAVE BEEN PROVIDED TO BUYER BY ANY RESPECTIVE AFFILIATE OR REPRESENTATIVE OF ANY SELLER OR BY ANY INVESTMENT BANK OR INVESTMENT BANKING FIRM, SELLERS' COUNSEL, OR ANY OTHER AGENT, CONSULTANT, OR REPRESENTATIVE OF SELLERS). WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EXCEPT AS AND TO THE EXTENT EXPRESSLY SET FORTH IN THIS AGREEMENT AND IN THE TRANSACTION DOCUMENTS, SELLERS EXPRESSLY DISCLAIMS AND NEGATES ANY REPRESENTATION OR WARRANTY, EXPRESS, IMPLIED, AT COMMON LAW, BY STATUTE, OR OTHERWISE, RELATING TO (I) THE TITLE TO ANY OF THE ASSETS, (II) THE CONDITION OF THE ASSETS (INCLUDING ANY IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR CONFORMITY TO MODELS OR SAMPLES OF MATERIALS), IT BEING DISTINCTLY UNDERSTOOD THAT THE ASSETS ARE BEING SOLD "AS IS," "WHERE IS," AND "WITH ALL FAULTS AS TO ALL MATTERS," (III) ANY INFRINGEMENT BY SELLERS OF ANY PATENT OR PROPRIETARY RIGHT OF ANY THIRD PARTY, (IV) ANY INFORMATION, DATA, OR OTHER MATERIALS (WHETHER WRITTEN OR ORAL) FURNISHED TO BUYER BY OR ON BEHALF OF SELLERS, AND (V) THE ENVIRONMENTAL CONDITION AND OTHER CONDITION OF THE ASSETS AND ANY POTENTIAL LIABILITY ARISING FROM OR RELATED TO THE ASSETS.

(b) Buyer acknowledges and affirms that it has made its own independent investigation, analysis, and evaluation of the transactions contemplated hereby and the Assets. Buyer acknowledges that in entering into this Agreement, it has relied only on the aforementioned investigation and the express representations and warranties of Sellers contained in this Agreement and the Transaction Documents. Buyer hereby irrevocably covenants to refrain from, directly or indirectly, asserting any claim, or commencing, instituting, or causing to be commenced, any Action of any kind against Sellers or their respective Affiliates, alleging facts contrary to the foregoing acknowledgment and affirmation.

ARTICLE 9

CONDITIONS PRECEDENT TO OBLIGATIONS OF BUYER TO CLOSE

The obligations of Buyer to consummate the transactions contemplated by this Agreement are subject to the satisfaction or waiver, at or prior to the Closing, of each of the following conditions:

9.1 Sellers' Performance.

The covenants and agreements that Sellers are required to perform or to comply with pursuant to this Agreement at or prior to the Closing shall have been duly performed and complied with in all material respects, and Buyer shall have received a certificate of Sellers to such effect signed by a duly authorized officer thereof.

9.2 No Order.

No Governmental Authority shall have enacted, issued, promulgated or entered any Governmental Order which is in effect and has the effect of making illegal or otherwise prohibiting the consummation of the transactions contemplated by this Agreement or could cause any of such transactions to be rescinded following the Closing.

9.3 Sellers' Deliveries.

Each of the deliveries required to be made by Sellers pursuant to Section 4.4 shall have been so delivered.

9.4 Assigned Contracts and Assigned Leases.

The Bankruptcy Court shall have approved and authorized the assumption and assignment of the Assigned Contracts and the Assigned Leases.

9.5 Sale Order.

The Bankruptcy Court shall have entered the Sale Order and the Sale Order shall be Final and in full force and effect.

ARTICLE 10

CONDITIONS PRECEDENT TO THE OBLIGATION OF SELLERS TO CLOSE

Sellers' obligation to consummate the transactions contemplated by this Agreement is subject to the satisfaction or waiver, at or prior to the Closing, of each of the following conditions:

10.1 Sale Order in Effect.

The Bankruptcy Court shall have entered the Sale Order and the Sale Order shall be Final and in full force and effect.

10.2 Buyer's Performance.

The covenants and agreements that Buyer is required to perform or to comply with pursuant to this Agreement at or prior to the Closing shall have been performed and complied with in all material respects, and Sellers shall have received a certificate of Buyer to such effect signed by a duly authorized officer thereof.

10.3 No Order.

No Governmental Authority shall have enacted, issued, promulgated or entered any Order which is in effect and which has the effect of making illegal or otherwise prohibiting the consummation of the transactions contemplated by this Agreement or could cause any of such transactions to be rescinded following the Closing.

10.4 Buyer's Deliveries.

Each of the deliveries required to be made by Buyer pursuant to Section 4.2 and Section 4.3 shall have been so delivered.

ARTICLE 11

TERMINATION

11.1 Termination Events.

Anything contained in this Agreement to the contrary notwithstanding, this Agreement may be terminated at any time prior to the Closing:

(a) by either Sellers or Buyer:

(i) if a Governmental Authority issues a final, non-appealable ruling or Governmental Order prohibiting the transactions contemplated hereby where such ruling or Governmental Order was not requested, encouraged or supported by any of Sellers or Buyer;

(ii) by mutual written consent of Sellers and Buyer;

(iii) if the Closing shall not have occurred by the close of business on January [___], 2019 (the "Outside Date"); *provided, however*, that if the Closing has not occurred by such date, but on such date all of the conditions set forth in ARTICLE 9 and ARTICLE 10 have been satisfied or waived (to the extent such conditions may be waived) other than the conditions set forth in Sections 9.5 and 10.1, then the Outside Date shall automatically be extended until one (1) month after such date (and such date shall be deemed to be the "Outside Date" for all purposes hereunder); *provided, further*, that (A) Buyer shall be permitted to terminate this Agreement pursuant to this Section 11.1(a)(iii) only if (x) Buyer is not itself in material breach of any of its representations, warranties, covenants or agreements contained herein and (y) Buyer has provided written notice to Sellers of its intention to exercise its rights under this Section 11.1(a)(iii) and Sellers have not provided written notice to Buyer that it is ready, willing and able to close the transactions contemplated by this Agreement on or before the date that is five (5) Business Days

after the date of such notice from Buyer, and (B) Sellers shall be permitted to terminate this Agreement pursuant to this Section 11.1(a)(iii) only if (x) No Seller is itself in material breach of any of their representations, warranties, covenants or agreements contained herein and (y) Sellers have provided written notice to Buyer of its intention to exercise their rights under this Section 11.1(a)(iii) and Buyer has not provided written notice to Sellers that it is ready, willing and able to close the transactions contemplated by this Agreement on or before the date that is five (5) Business Days after the date of such notice from Sellers;

(iv) if the Bankruptcy Court enters an order dismissing, or converting into cases under chapter 7 of the Bankruptcy Code, any of the cases commenced by Sellers under chapter 11 of the Bankruptcy Code and comprising part of the Bankruptcy Cases and such order is Final; or

(v) if Sellers enter into (or provides written notice to Buyer of its intent to enter into, or otherwise publicly announces) one (1) or more Alternative Transactions or other agreements to sell, transfer, or otherwise dispose of any of the Assets in a transaction or series of transactions other than in the Ordinary Course of Business with one (1) or more Persons other than Buyer or the Successful Bidder at the Auction;

(b) by Buyer:

(i) in the event of any breach by Sellers of any of Sellers' agreements, covenants, representations, or warranties contained herein (*provided* such breach would result in the failure of a condition set forth in Section 9.1 to be satisfied) or (if such breach is material) in the Bidding Procedures Order or Sale Order, and the failure of Sellers to cure such breach within ten (10) days after receipt of the Buyer Termination Notice; *provided, however*, that (A) Buyer is not itself in material breach of any of its representations, warranties, covenants or agreements contained herein or in the Bidding Procedures Order or the Sale Order, (B) Buyer notifies Sellers in writing (the "Buyer Termination Notice") of its intention to exercise its rights under this Section 11.1(b) as a result of the breach, and (C) Buyer specifies in the Buyer Termination Notice the representation, warranty, covenant or agreement contained herein or in the Bidding Procedures Order or Sale Order of which Sellers is allegedly in breach and a description of the specific factual circumstances to support the allegation; or

(ii) if Buyer is not the Successful Bidder or the Backup Bidder at the Auction;

(c) by Sellers:

(i) in the event of any breach by Buyer of any of Buyer's agreements, covenants, representations or warranties contained herein (*provided* such breach would result in the failure of a condition set forth in Section 10.1 to be satisfied) or (if such breach is material) in the Bidding Procedures Order or Sale Order, and the failure of Buyer to cure such breach within ten (10) days after receipt of the Seller Termination Notice; *provided, however*, that Sellers (A) are not themselves in material breach of any of its representations, warranties, covenants or agreements contained herein or in the Bidding Procedures Order or the Sale Order, (B) notifies Buyer in writing (the "Seller Termination Notice") of its intention to exercise its rights under this

Section 11.1(c)(i) as a result of the breach, and (C) specifies in the Seller Termination Notice the representation, warranty, covenant or agreement contained herein or in the Bidding Procedures Order or Sale Order of which Buyer is allegedly in breach and a description of the specific factual circumstances to support the allegation; or

(ii) if Buyer is not the Successful Bidder or the Backup Bidder at the Auction.

11.2 Effect of Termination.

(a) Except as provided below in Sections 11.2(c) through (e), in the event of termination of this Agreement by Buyer or Sellers pursuant to this ARTICLE 11, all rights and obligations of the Parties under this Agreement shall terminate without any Liability of any Party to any other Party; *provided, however*, that nothing herein shall relieve any Party from liability for breach of this Agreement prior to such termination. The provisions of this Section 11.2 (and, to the extent applicable to the interpretation or enforcement of such provisions, ARTICLE 1 and ARTICLE 12), shall expressly survive the termination of this Agreement.

(b) Each Party acknowledges that the agreements contained in this Section 11.2 are an integral part of the transactions contemplated by this Agreement, that without these agreements such Party would not have entered into this Agreement, and that such agreements shall survive the Closing.

(c) If Sellers close an Alternative Transaction (or Alternative Transactions), or if Buyer terminates this Agreement as permitted by Sections 11.1(a)(iii), 11.1(a)(v), 11.1(b)(i), or 11.1(b)(ii), or if Seller terminates this Agreement pursuant to Section 11.1(c)(ii), or if at the time of termination of this Agreement for any other reason Buyer would be entitled to terminate this Agreement pursuant to these aforementioned Sections, then Buyer shall be entitled to return of the entire Deposit (without interest thereon).

(d) If Sellers terminate this Agreement as permitted by Sections 11.1(a)(iii) or 11.1(c)(i) and Buyer would not otherwise be entitled to the return of the Deposit under Section 11.2(c), then Buyer shall forfeit the Deposit to the Sellers and the Deposit shall be paid to the Sellers pursuant to the Bidding Procedures Order (without interest thereon).

(e) If the Agreement is terminated by any Party pursuant to Sections 11.1(a)(i) or 11.1(a)(iv) or if the Agreement is terminated by mutual written consent pursuant to Section 11.1(a)(ii), then Buyer shall be entitled to recover the Deposit and the Deposit shall be paid to Buyer pursuant to the Bidding Procedures Order (without interest thereon).

ARTICLE 12

GENERAL PROVISIONS

12.1 Survival.

All covenants and agreements contained herein which by their terms are to be performed in whole or in part, or which prohibit actions, subsequent to the Closing shall, solely to the extent

such covenants and agreements are to be performed, or prohibit actions, subsequent to the Closing, survive the Closing in accordance with their terms, as shall all representations and warranties.

12.2 Confidentiality.

The Parties agree that the confidentiality agreement entered into by them and their Affiliates, dated [●], 2018 (the “Confidentiality Agreement”), shall continue in full force and effect notwithstanding the execution and delivery by the Parties of this Agreement; *provided, however*, that (a) disclosure of matters that become a matter of public record as a result of the Bankruptcy Case and the filings related thereto shall not constitute a breach of such Confidentiality Agreement, and (b) disclosures permitted under this Agreement shall not constitute a breach of such Confidentiality Agreement.

12.3 Public Announcements.

Unless otherwise required by applicable Legal Requirement or by obligations of Buyer or Sellers or their respective Affiliates pursuant to any listing agreement with or rules of any securities exchange, Buyer, on the one hand, and Sellers, on the other hand, shall consult with each other before issuing any press release or otherwise making any public statement with respect to this Agreement, the transactions contemplated hereby or the activities and operations of the other and shall not issue any such release or make any such statement without the prior written consent of the other (such consent not to be unreasonably withheld or delayed).

12.4 Notices.

All notices, consents, waivers and other communications under this Agreement must be in writing and shall be deemed to have been duly given when (a) delivered by hand (with written confirmation of receipt), (b) received by the addressee, if sent by a delivery service (prepaid, receipt requested), or (c) received by the addressee, if sent by registered or certified mail (postage prepaid, return receipt requested), with a copy of such notice simultaneously provided by email, in each case to the appropriate addresses and representatives (if applicable) set forth below (or to such other addresses and representatives as a Party may designate by notice to the other Parties):

(i) If to Sellers, then to:

Republic Metals Corp.
12900 N.W. 38th Avenue
Miami, FL 33054
Attention: Scott Avila, CRO
Email: savila@paladinmgmt.com

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

Akerman LLP
2001 Ross Avenue
Suite 3600
Dallas, TX 75201
Attention: John Mitchell

Email: john.mitchell@akerman.com

and

Akerman LLP
98 Southeast Seventh Street
Suite 1100
Miami, FL 33131
Attention: Martin Burkett
Email: martin.burkett@akerman.com

and

SSG Capital Advisors
300 Barr Harbor Drive, Suite 420
West Conshohocken, PA 19428
Attention: Mark E. Chesen and Michael Goodman
Email: mgoodman@ssgca.com
mchesen@ssgca.com

and

Luskin, Stern & Eisler, LLP
Eleven Times Square
New York, NY 10036
Attention: Richard Stern
Email: stern@lsellp.com

(ii) If to Buyer:

[ADD ADDRESS]

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

[ADD ADDRESS]

12.5 Waiver, Waiver of Damages.

Neither the failure nor any delay by any Party in exercising any right, power or privilege under this Agreement or the documents referred to in this Agreement shall operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege shall preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law, (a) no waiver that may be given by a Party shall be applicable except in the specific instance for which it is given, and (b) no notice to or demand on one Party shall be deemed to be a waiver of any right of the Party giving such notice or demand to take further action without notice or demand. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, NO PARTY SHALL BE LIABLE TO THE OTHER FOR SPECIAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF,

ASSOCIATED WITH, OR RELATING TO THIS AGREEMENT (INCLUDING LOSS OF PROFIT OR BUSINESS INTERRUPTIONS, HOWEVER SAME MAY BE CAUSED) AND THE PARTIES HEREBY WAIVE ALL CLAIMS FOR ANY SUCH DAMAGES.

12.6 Entire Agreement; Amendment.

This Agreement (including the Exhibits, Annexes, Schedules and Disclosure Schedules) and the other Transaction Documents supersede all prior agreements between Buyer, on the one hand, and Sellers, on the other hand, with respect to its subject matter and constitute a complete and exclusive statement of the terms of the agreements between Buyer, on the one hand, and Sellers, on the other hand, with respect to their subject matter. This Agreement may not be amended except by a written agreement executed by all of the Parties.

12.7 Assignment.

(a) Except as expressly permitted in this Agreement, the rights and obligations of the Parties under this Agreement shall not be assignable by a Party without the written consent of the other Party. Notwithstanding the foregoing, Buyer shall have the unrestricted right to assign this Agreement as collateral, and in connection therewith to delegate all or any part of its obligations hereunder to any lender in connection with any financing or to any Affiliate of Buyer, but in such event Buyer shall remain fully liable for the performance of all of such obligations in the manner prescribed in this Agreement.

(b) This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and permitted assigns. The successors and permitted assigns hereunder shall include any permitted assignee as well as the successors in interest to such permitted assignee (whether by merger, consolidation, liquidation (including successive mergers, consolidations or liquidations) or otherwise). Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon any Person other than the Parties and successors and assigns permitted by this Section 12.7 any right, remedy or claim under or by reason of this Agreement.

12.8 Severability.

The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provisions shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability.

12.9 Expenses.

Whether or not the transactions contemplated by this Agreement are consummated, except as provided in Sections 11.2(c) through 11.2(e), the Parties shall bear their own respective expenses (including all compensation and expenses of counsel, financial advisors, consultants, actuaries and independent accountants) incurred in connection with this Agreement and the

transactions contemplated hereby; *provided, however*, Sellers shall pay all amounts payable to SSG Capital Advisors, LLC, in accordant with an order of the Bankruptcy Court.

12.10 Time of Essence.

Time shall be of the essence with respect to all time periods and notice periods set forth in this Agreement.

12.11 Governing Law; Consent to Jurisdiction and Venue; Jury Trial Waiver.

(a) **EXCEPT TO THE EXTENT THE MANDATORY PROVISIONS OF THE BANKRUPTCY CODE APPLY, THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED ENTIRELY IN SUCH STATE WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OR CHOICE OF LAWS OR ANY OTHER LAW THAT WOULD MAKE THE LAWS OF ANY OTHER JURISDICTION OTHER THAN THE STATE OF NEW YORK APPLICABLE HERETO.**

(b) Without limitation of any Party's right to appeal any order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby, and (ii) any and all claims relating to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent and submit to the exclusive jurisdiction and venue of the Bankruptcy Court and irrevocably waive the defense of an inconvenient forum to the maintenance of any such Action; *provided, however*, that, if the Bankruptcy Case is closed, all Actions arising out of or relating to this Agreement shall be heard and determined in a New York state court or a federal court sitting in New York, New York, and the Parties hereby irrevocably submit to the exclusive jurisdiction and venue of such courts in any such Action and irrevocably waive the defense of an inconvenient forum to the maintenance of any such Action. The Parties consent to service of process by mail (in accordance with Section 12.4) or any other manner permitted by law.

(c) **THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF SELLERS, BUYER OR THEIR RESPECTIVE REPRESENTATIVES IN THE NEGOTIATION OR PERFORMANCE HEREOF.**

12.12 Counterparts.

This Agreement and any amendment hereto may be executed in two (2) or more counterparts, each of which shall be deemed to be an original of this Agreement or such amendment and all of which, when taken together, shall constitute one and the same instrument. Notwithstanding anything to the contrary in Section 12.4, delivery of an executed counterpart of a signature page to this Agreement or any amendment hereto by telecopier or email attachment shall be effective as delivery of a manually executed counterpart of this Agreement or such amendment, as applicable.

12.13 Parties in Interest; No Third Party Beneficiaries.

This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable benefit, claim, cause of action, remedy or right of any kind.

12.14 Non-Recourse.

No past, present or future director, officer, employee, incorporator, member, partner or equity holder of Buyer or any Seller shall have any Liability for any obligations or liabilities of such Party under this Agreement or any other Transaction Document, for any claim based on, in respect of, or by reason of the transactions contemplated hereby and thereby.

12.15 Headings.

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

12.16 Disclosure Schedules; Materiality.

The disclosure of any particular fact or item in any Disclosure Schedule shall not be deemed an admission as to whether the fact or item is “material” or would constitute a “Material Adverse Effect.”

[Signature page follows.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by their duly authorized representatives, all as of the day and year first above written.

BUYER

[____]

By: _____
Name: _____
Title: _____

SELLERS

Republic Metals Corporation

By: _____
Name: _____
Title: _____

Republic Metals Refining Corporation

By: _____
Name: _____
Title: _____

Republic High Tech Metals, LLC

By: _____
Name: _____
Title: _____

Republic Carbon Company, LLC

By: _____
Name: _____
Title: _____

SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT

RMC Diamonds LLC

By: _____
Name: _____
Title: _____

Richard Dennis Rubin Enterprises LLC

By: _____
Name: _____
Title: _____

RMC 2 LLC

By: _____
Name: _____
Title: _____

J & L Republic, LLC

By: _____
Name: _____
Title: _____

R & R Metals, LLC

By: _____
Name: _____
Title: _____

Republic Trans Mexico Metals, S.R.L.

By: _____
Name: _____
Title: _____

SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT

ANNEX 1

SUBSIDIARY SELLERS

1. Republic High Tech Metals, LLC, a Florida limited liability company
2. Republic Carbon Company, LLC, a Florida limited liability company
3. RMC Diamonds LLC, a Florida limited liability company
4. Richard Dennis Rubin Enterprises LLC, a Florida limited liability company
5. RMC 2 LLC, a Florida limited liability company
6. J & L Republic, LLC, a Florida limited liability company
7. R & R Metals, LLC, a Florida limited liability company
8. Republic Trans Mexico Metals, S.R.L., a Mexican limited liability company

EXHIBIT 2

Back-Up Asset Purchase Agreement

[To Be Supplementg in Advance of Sale Hearing]

EXHIBIT 3

Real Property Leases Assumed and Assigned to Purchaser According to the APA

[To Be Supplemented in Advance of Sale Hearing]

EXHIBIT 4

Executory Contracts Assumed and Assigned to Purchaser According to the APA

[To Be Supplemented in Advance of Sale Hearing]