UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, -v- PLATINUM MANAGEMENT (NY) LLC; PLATINUM CREDIT MANAGEMENT, L.P.; MARK NORDLICHT; DAVID LEVY; DANIEL SMALL; URI LANDESMAN; JOSEPH MANN; JOSEPH SANFILIPPO; and JEFFREY SHULSE, Defendants.	:	No. 16-cv-6848 (BMC)

DECLARATION OF MELANIE L. CYGANOWSKI,
AS RECEIVER, ATTACHING RESPONSES TO ABDALA SALE MOTION

I, Melanie L. Cyganowski, pursuant to 28 U.S.C. § 1746, hereby declare that the following is true to the best of my knowledge, information and belief:

1. I make this declaration in my capacity as the duly appointed Receiver of Platinum Credit Management, L.P., Platinum Partners Credit Opportunities Master Fund LP, Platinum Partners Credit Opportunities Fund (TE) LLC, Platinum Partners Credit Opportunities Fund LLC, Platinum Partners Credit Opportunities Fund (BL) LLC, Platinum Liquid Opportunity Management (NY) LLC, Platinum Partners Liquid Opportunity Fund (USA) L.P., Platinum Partners Liquid Opportunity Master Fund L.P., Platinum Partners Credit Opportunities Fund International Ltd and Platinum Partners Credit Opportunities Fund International (A) Ltd, in connection with my motion for entry of an order, Dkt. No. 357 (the "***Motion***") (a) approving the sale of the Receivership's rights in and to a gold tailings pond in central Brazil known as "***Abdala***" and (b) authorizing me to pay the fees and expenses of Platinum's Brazilian counsel,

Chediak Advogados ("***Chediak***"), whose retention this Court approved by Order Authorizing the Receiver's Application to Retain and Pay Limited Scope Legal Professionals entered December 26, 2017 [Dkt. No. 294] (the "***Retention Order***"), from the proceeds of the Abdala sale.[1]

2. Pursuant to the October 11, 2017 Order Adopting Protocols For Parties In Interest To Be Heard On Receiver Motions, Dkt. No. 271, (the "***Protocols Order***"), attached hereto, are the following responses to the Motion that were timely delivered to my counsel's e-mail address:

(i) **Exhibit 1** - August 1, 2018 e-mail from Lloyd Keilson (the "***Keilson Opposition***");

(ii) **Exhibit 2** – August 3, 2018 letter from William Nystrom on behalf of certain investors in PPCO (the "***Nystrom Opposition***"); and

(iii) **Exhibit 3** – August 3, 2018: Objection to Receiver's Motion for Entry of an Order Approving the Sale of the Receivership's Rights In and To the Gold Tailings Pond Known as "Abdala", which was also served with a request for the production of documents (the "***Document Requests***") by Zanhav Holding LLC and Piping Brook LLC (the "***Zanhav Opposition***" and collectively with the Keilson Objection and Nystrom Objection, the "***Oppositions***").

3. In accordance with the Protocols Order, I will file my response to the Oppositions on or before August 10, 2018, although I reserve my right to respond separately, and within the time afforded by Federal Rules of Civil Procedure 26 and 34, to the Document Requests.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 6th day of August, 2018, at New York, New York.

/s/ Melanie L. Cyganowski
Melanie L. Cyganowski

[1] All capitalized terms not defined herein shall have the meanings ascribed by the Motion.

EXHIBIT 1

From: Lloyd Keilson <lk@lkeilson.com>
Sent time: 08/01/2018 12:01:54 AM
To: Platinum Receiver
Subject: Motion regarding sale of ABDALA

Gentlemen:

I am a small fish in a very large pond. $800,000 invested . I recognize that the ABDALA asset garnered a lot of attention – primarily because it appears to be the only Hail Mary play at this point which can provide some measure of hope that investors will live to see some recovery. I am very troubled that your Motion is fairly dismissive of the Bart Schwartz effort to invest relatively small monies into an asset that could potentially change the playing field.

Bart Schwartz and his group are not a bunch of amateurs portrayed by your words as engaging in a speculative venture. Granted we cannot put our confidence in Nordlicht's valuation but Bart Schwartz brings to the table a strong and recognized reputation in this field of asset recovery. Unless you tell me otherwise we are headed for asset recoveries that will not yield anything at all for the investors. If that be the case then why not take the small monies and make an attempt to get some meaningful restitution . You are paying Houlihan a commission of $1,375,000 which could easily have been applied to as a better 'speculative' investment in ABDALA.

I think a decision on this sale should be guided by whether there is any expectation through the sale of all of the 100+ investments that we the Investors will see any recovery ? If not and ABDALA is the crown jewel then why not 'throw the dice' – you will no worse off than you are presently.You **are not** monetizing in an orderly fashion but rather eliminating any possible recovery for the investors.

If I am wrong in my conclusions then please set forth how you see any monies become available at the end of this exercise other than to the Professionals ???

Sincerely,

A Very disappointed Investor

Lloyd Keilson

EXHIBIT 2

Nystrom Beckman & Paris LLP
Counselors at Law

August 3, 2018

Via Service Through the Receiver
Honorable Brian M. Cogan
United States District Court for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: SEC v. Platinum Management (NY) LLC, et al.
Case No. 16-cv-06848-DLI-VMS

Dear Judge Cogan:

This Response to the Receiver's Motion for Court Order Approving the Sale of "Abdala" is filed on behalf of fifty limited partner investors with an aggregate investment of $65 million in the Platinum Partners Credit Opportunities Fund ("PPCO"), each of whom are unaffiliated with Platinum Partners and its former management (the "Independent Investors"). The Response is submitted pursuant to this Court's Order Adopting Protocols for Parties in Interest to Be Heard on Receiver Motions, dated October 11, 2017. Dkt. #271. In short, the Independent Investors posit that the process leading to the proposed sale of Abdala does not comply with the requirements under 28 U.S.C. § 2001, which prescribes the appraisal and sale requirements for the disposition of interests in real estate held in a federal receivership.

Section 2001 of Title 28 of the United States Code sets forth a two-step process for approving the sale of a federal receivership's real property. See SEC v. Am. Capital Invts., 98 F.3d 1133, 1137 (9th Cir. 1996) (describing § 2001 as prescribing "the two-step process . . . for approving the sale of receivership property"). See also SEC v. Schooler, No. 3:12-CV-02164-GPC-JMA, 2018 WL 3618490, at *2 n.3 (S.D. Cal. July 30, 2018) (noting court's directive to Receiver to incorporate public sale process consistent with 28 U.S.C. § 2001 in sale of real property in receivership proceeding stemming from SEC enforcement action against perpetrator of fraudulent investment scheme); SEC v. Fujinaga, No. 2:13-CV-1658 JCM (CWH), 2017 WL 4369467, at *2 (D. Nev. Oct. 2, 2017) (denying motion to approve sale of real property in receivership where Receiver failed to comply with 28 U.S.C. § 2001); SEC v. Bivona, No. 3:16-cv-01386-EMC, 2016 WL 5899288, at *7 (N.D. Cal. Oct. 11, 2016) (granting receiver authority to dispose of real property pursuant to court requirements and "additional authority such as 28 U.S.C. §§ 2001 and 2004"); U.S. Bank Nat'l Assoc. v. Armstrong Tuckerton, LLC, No. 3:12-cv-030022 (MAS) (TJB), 2013 WL 12303202, at *6 (D.N.J. Oct. 7, 2013) (authorizing receiver to expose real property to sale pursuant to 28 U.S.C. § 2001, *et seq*.). Specifically, the statute states:

> Any realty or interest therein sold under any order of decree of any court of the United States . . . shall be sold at public sale . . . . After hearing, of which notice to all interested parties shall be given by publication or otherwise as the court directs, the court may order the sale of such realty or interest . . . at private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be conserved thereby. *Before confirmation of any private sale, the court shall appoint three distinterested persons to appraise such property* or different groups of three appraisers each to appraise properties of different classes or situated in different localities. *No private sale shall be confirmed at a price less than two-thirds of the appraised value.*"

28 U.S.C. § 2001 (emphases added).

In the Receiver's Status Reports, Abdala is described as "interests in . . . a gold mine tailings impoundment located near Cuiaba, Brazil." Dkt. #354, at 19. In her Motion, the Receiver identifies PPCO's Abdala investment as "rights to extract gold for a period of ten years from a tailings pond located near Cuiaba, Brazil" and a "sub-lease for the parcel of land . . . to develop a plant to process the gold tailings." Dkt. #357-1, at 4-5; Declaration of Melanie Cyganowski, ¶¶ 11, 22; Declaration of Houlihan Lokey Capital, Inc., ¶ 10. Thus, the Abdala asset is both the sale of mineral rights and a leasehold interest, which constitute interests in realty.[1] Because the Abdala sale conveys an interest in realty, the Receivership proceeding must comport with 28 U.S.C. § 2001, which mandates procedures for the judicial sale of interests in realty to ensure that the outcome of the sale process is appropriate. See U.S. v. Grable, 25 F.3d 298, 303-04 (6th Cir. 1994); Schooler, 2018 WL 3618490, at *2 n.3; Fujinaga, 2017 WL 4369467, at *2.

Here, the statutory procedures for sale of an interest in realty by this Court have not been observed. There has been no hearing by which Court approval for a private sale has been provided. There has been no appraisal of Abdala's market value by disinterested persons appointed by the Court. And there is no way to evaluate whether the Receiver's proposed sale comports with 28 U.S.C. § 2001's requirement that the sale price be sufficiently proportionate to Abdala's appraised value. For these reasons, the Independent Investors respectfully request that this Court order the Receiver to observe the sale procedures prescribed by 28 U.S.C. § 2001 for

[1] See In Re Barnett, 12 F.2d 73, 77 (2d Cir. 1926) (a "lease . . . affects the creation of an interest in real estate"); see also In re Davis, 503 B.R. 609, 619 (Bankr. M.D. Pa. 2013) ("Under Pennsylvania law, conveyance of oil, gas, or mineral rights is a conveyance of an interest in realty"); White v. Zini, 39 Ark. App. 83, 88 (1992) ("[A]s an interest in land, an easement must be conveyed in the same manner as standing timber, mineral rights, or any other interest in realty."); Barela v. Locer, 103 N.M. 395, 398 (1985) ("This Court, since 1922, has consistently held that oil and gas and mineral leases are [conveyances of] real property."); Baltzley v. Wiseman, 28 N.C. App. 678, 682 (1976) ("[T]he mineral rights [are] part of the realty"); Texas Co. v. Beall, 3 S.W.2d 524, 526 (Tex. Civ. Ct. App. 1927) ("It is a well established principle of law now in Texas that mineral rights are part of the realty").

the disposition of the realty interests in Abdala. The Independent Investors request that three disinterested persons be appointed by the Court to appraise Abdala, and that a hearing be held on the subject of whether the terms of the proposed sale satisfy the requirements of 28 U.S.C. § 2001.

Thank you for your kind attention to this matter.

Respectfully submitted,

/s/ William C. Nystrom
William C. Nystrom

cc: Hon. Melanie Cyganowski (via email)
Adam Silverstein (via email)

EXHIBIT 3

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, *Plaintiff*, – against – PLATINUM MANAGEMENT (NY) LLC, PLATINUM CREDIT MANAGEMENT, L.P., MARK NORDLICHT, DAVID LEVY, DANIEL SMALL, URI LANDESMAN, JOSEPH MANN, JOSEPH SANFILIPPO, and JEFFREY SHULSE, *Defendants.*	No. 16-cv-6848 (BMC)
ZANHAV HOLDING LLC and PIPING BROOK LLC, *Objector.*	

ZANHAV HOLDING LLC'S AND PIPING BROOK LLC'S OBJECTION TO RECEIVER'S MOTION FOR ENTRY OF AN ORDER APPROVING THE SALE OF THE RECEIVERSHIP'S RIGHTS IN AND TO THE GOLD TAILINGS POND KNOWN AS "ABDALA"

Objectors Zanhav Holding LLC ("Zanhav") and Piping Brook LLC ("Piping Brook" and collectively, "Objectors") respectfully submit this objection to the Receiver's motion for entry of an order approving the sale of the Receivership's rights in and to the gold tailings pond known as "Abdala" (the "Abdala Tailings Project") to non-parties CB Midas Holdings LLC and CB Midas Brazil Participacoes Ltda. (each an affiliate of Centerbridge Partners, L.P. and collectively "Centerbridge").[1] (*See* ECF No. 357). Objectors object to the Receiver's proposed sale because

[1] Objectors do not object to Receiver's motion to the extent she seeks an order authorizing the payment of fees and expenses of Platinum's Brazilian counsel from the proceeds of

it resulted from a flawed and poorly implemented auction process that was destined to fail and indeed failed to achieve the highest price for the most valuable asset of the Receivership. Once Zanhav became aware of the parameters of the winning bid, including terms and conditions that were once thought to be unattractive to the Receiver, Zanhav made a new proposal on August 2, 2018, that is significantly superior to the Centerbridge bid. Further, the Centerbridge deal is even inferior to the bid previously submitted by Zanhav in the auction process. Accordingly, the Court should deny the Receiver's motion, and direct the Receiver to consider Zanhav's most recent bid. In support of this objection, Objectors respectfully state as follows:

PRELIMINARY STATEMENT

Since approximately December 2017, Zanhav and its affiliates have participated in the Abdala Tailings Project bidding process run by the Receiver and her retained professionals.[2] Those retained professionals repeatedly assured Zanhav that the purpose of the bidding process was to maximize the immediate liquidation value of Abdala—the Receivership's most valuable asset. Zanhav devoted substantial time and effort in conducting due diligence, participating in a site visit in Brazil, preparing good-faith bids on the Abdala Tailings Project, and drafting a proposed definitive purchase agreement with the Receiver as well as an agreement with JDS Energy & Mining, Inc. ("JDS") and an employment agreement with Abdala's current chief executive. In total, Zanhav incurred more than $500,000 in costs in this process. During the course of the bidding process, Zanhav understood the Receiver's decision not to run additional

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any sale of the Abdala Tailings Project. Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Receiver's motion for approval of sale.

2 Piping Brook is an investment vehicle owned by the wife of J. Ezra Merkin (one of the principals of Zanhav) and certain trusts for the benefit of members of the Merkin family. Piping Brook is an investor in one of the Receivership entities, having invested $1 million in August 2008, which was reported to have been worth nearly $2.4 million as of March 2016, prior to the commencement of the Receivership.

third party tests of the gold content at Abdala and further understood from the Receiver's professionals that the Receiver would not look favorably on bids contingent on additional resource validation testing of the tailings.

Accordingly, in its most recent bid prior to its August 2 proposal, Zanhav offered to acquire the Abdala Tailings Project for, at the option of the Receiver: (i) $30 million in cash at closing; or (ii) $20 million cash at closing plus a royalty equal to 7.5% of gold mined from Abdala above a threshold equal to approximately two times Zanhav's invested capital, with the additional right of the Receiver to put the contingent consideration to Zanhav for $10 million in cash at any time within one year of the closing (the "Rejected Zanhav Bid," a copy of which is annexed hereto as Exhibit 1). Although the Rejected Zanhav Bid would have provided superior guaranteed cash consideration to that offered in the deal for which the Receiver now seeks approval ($30 million compared to $27.5 million), the Receiver apparently determined that the contingent consideration in the terms offered by Centerbridge made it more attractive to the Receivership than the all-cash Rejected Zanhav Bid.

Indicative of the faulty process, at no time did the Receiver's advisors undertake standard and customary diligence concerning the Zanhav bids, assuring Zanhav's representatives that Zanhav's proposals were clear. The Receiver's professionals conducted, at most, a perfunctory set of inquiries concerning Zanhav, its principals, its capabilities, either financial or operational, or the underpinnings for its proposals. Moreover, at no time did those advisors suggest what the Receiver wanted from Zanhav or attempt to engage in a competitive negotiation with Zanhav, and twice the Receiver allowed the deadlines in Zanhav's bid to expire without any response.

On August 2, 2018, after receiving a copy of the Receiver's motion and the summary of the terms of Centerbridge's bid contained therein,[3] Zanhav submitted a revised bid to the Receiver offering additional contingent consideration (the "Revised Zanhav Bid," a copy of which is annexed hereto as Exhibit 2). The terms of the Revised Zanhav Bid are clearly superior to those offered by Centerbridge at every stage and under every outcome with respect to the gold content of Abdala. Thus, the Court can fully remedy any deficiencies with the bidding process to date, including the guidance that bids offering consideration contingent on additional resource validation would be disfavored, by refusing to approve the Receiver's proposed sale to Centerbridge without first directing the Receiver to consider fully and fairly the Revised Zanhav Bid. For the Receiver to proceed with the sale on the terms outlined in her motion without first giving such consideration to the Revised Zanhav Bid would irreparably harm the Receivership by allowing its most valuable asset to be sold for less than fair value.

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[3] The Receiver's motion inexplicably fails to include a copy of Purchase, Sale and Royalty Agreement (the "PSRA"), for which she seeks the Court's approval, making it impossible for the Court, Objectors or other interested parties to determine whether the Centerbridge bid contains other contingencies, closing conditions or indemnities that further reduce the purported value of the Centerbridge bid. The Receiver's motion should be denied for that independent reason alone. Moreover, the Receiver's description of the terms of the PSRA is not competent evidence to prove its contents. *See* Fed. R. Evid. 1002 ("An original writing . . . is required in order to prove its contents unless these rules or a federal statute provides otherwise."); Fed. R. Evid. 1003 (duplicate admissible); Fed. R. Evid. 1004, 1007 (excusing requirement of Rule 1002 under circumstances not applicable). Accordingly, at a minimum, the Court should require the Receiver to file a copy of the PSRA on the docket and provide potential objectors with adequate time to consider any further objections to its terms.

ARGUMENT

I. ZANHAV'S BID IS SUPERIOR TO THAT FOR WHICH THE RECEIVER SEEKS APPROVAL.

The Revised Zanhav Bid is clearly superior to the sale terms proposed in the Receiver's motion because it offers, in exchange for the Receivership's interests in the Abdala Tailings Project: (i) an additional $2.5 million in up-front cash consideration; (ii) an additional $2 million ($5 million, compared to $3 million in the Centerbridge offer) creditable against future royalty payments, conditioned on near-term resource testing of the tailings dam resulting in a head grade of at least 9 grams per ton; and (iii) a royalty of 7.5% of total gold extracted from the Abdala Tailings Project after Zanhav first achieves a 3.0x multiple of invested capital (the same royalty rate and threshold offered by Centerbridge but based on gold content rather than revenues, making verification of Zanhav's royalty much simpler).

Thus, upon closing of the transaction contemplated in the Revised Zanhav Bid, the Receivership would stand to receive an additional $2.5 million in up-front cash consideration. This represents an improvement of 9.1% on the cash consideration Centerbridge offers. Moreover, should resource testing of the Abdala Tailing Project yield a head grade of 9 grams per ton or more, the Receivership would stand to receive an additional $2 million contingent payment before the actual refining process even commences. This represents an improvement of 40% on the testing-based contingent consideration offered by Centerbridge. In other words, assuming the head grade threshold is reached, Zanhav's bid would be 14.75% more than the combined cash and testing-contingent consideration the Receiver seeks Court approval to accept from Centerbridge for the Receivership's most important asset. In sum, the Revised Zanhav Bid offers the Receiver a 2.2x return on the Receivership's invested capital, far superior to the 1.8x

return on the Receivership's invested capital that the Receiver herself cited as a compelling reason for the proposed sale to Centerbridge.

In terms of royalty payments, the terms of the Revised Zanhav Bid are also superior to those offered by Centerbridge. Zanhav and Centerbridge each propose a 7.5% royalty after a return of 3.0x their invested capital. The principals of Zanhav are J. Ezra Merkin and Daniel Posen. Mr. Posen has extensive experience in both the mining and commodities business, including having been a founder of Trafigura Group Pte Ltd., one of the largest mineral and commodities companies in the world, and has successfully completed dozens of corporate transactions in Brazil. In addition, Zanhav has fully negotiated agreements with Elliot Bertram, the current chief executive of Abdala, and JDS to continue in their current roles for Abdala. Thus, Zanhav is every bit as capable of maximizing the Receivership's royalty-based contingent compensation as Centerbridge, a premise that the Receiver has never once questioned.

II. THE BIDDING PROCESS DID NOT PROVIDE ALL POTENTIAL BIDDERS WITH AN EQUAL OPPORTUNITY TO PREPARE COMPETITIVE BIDS.

The Receiver and her professional's conduct in accepting Centerbridge's bid without ever indicating that, contrary to prior guidance, the Receiver would favorably consider contingent consideration, or giving Zanhav the opportunity to make a competing proposal including consideration contingent on additional resource validation, is inexplicable. It is telling that, in describing the decision to accept the bid from Centerbridge, the Receiver pointedly does not discuss the terms of the Rejected Zanhav Bid at all. Rather, the Receiver states only that "Houhlihan received final bid[s] from four bidders" and that, "[a]fter the initial deadline, two of the bidders continued to significantly improve their bids." (ECF No. 357-4 at 12.) While the Receiver goes into some detail concerning the various facts and circumstances that were at issue during the bidding process, the Receiver does not assert that she or her professionals raised any

deficiencies in the Rejected Zanhav Bid with Zanhav or its advisors. Indeed, neither the Receiver nor her professionals requested any information concerning, much less sought to meet with, Zanhav's principals during the sale process. The Receiver's and her professionals' failure even to engage in these routine activities or to explain that failure to the Court fatally undermines the Receiver's claim that the terms offered by Centerbridge were the result of a "robust competitive bidding process." Further, despite her obligation to obtain the maximum return for the Receivership, the Receiver has inexplicably failed to respond to the Revised Zanhav Bid, which is clearly superior to the Centerbridge bid.

III. THE COURT SHOULD DENY THE RECEIVER'S MOTION AND DIRECT THE RECEIVER TO CONSIDER ZANHAV'S BID.

Given the superiority of the Revised Zanhav Bid and the clear deficiencies in the bidding process outlined above, the Receiver's motion for approval of the inferior terms offered by Centerbridge is entitled to no deference by this Court. Under New York law, which the Receiver conspicuously does not cite in her supporting papers, a receiver is entitled to the deference afforded by the business judgment rule only by first establishing "that there are sound business reasons for selling assets *and for accepting the offer [the receiver] accepted*." *Lawsky v. Condor Capital Corp.*, 154 F. Supp. 3d 9, 22 (S.D.N.Y. 2015) (emphasis added). The burden of meeting these threshold requirements for the application of the business judgment rule fall squarely on the receiver. *Id.* ("[A] trustee has the burden of establishing that there are sound business reasons for approving a proposed estate sale") (citing *Equity Sec. Holders v. Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983)). Here, there is no dispute concerning the Receiver's decision to sell the Abdala Tailings Project at this time. However, the Receiver's motion offers no justification at all for her decision to accept the Centerbridge bid over the Rejected Zanhav Bid despite the superior up-front cash consideration Zanhav offered, let alone any reason for

preferring the terms offered by Centerbridge to the Revised Zanhav Bid. By failing to explain why the proposed transaction is superior to other available alternatives, the Receiver has forfeited any right to claim the protections of the business judgment rule.

In seeking approval of the sale of the Abdala Tailings Project, the Receiver represented that her selection of the winning bid was the result of "a robust competitive bidding process." (ECF No. 357-1 at 2.) Even if the bidding process had been run properly (which it was not), the Revised Zanhav Bid is indisputably before the Receiver and superior to the Centerbridge bid in all respects. Both the Receiver and the Court are obligated to consider that bid prior to approval of the sale to Centerbridge. Indeed, the United States Court of Appeals for the Second Circuit, in the analogous context of a motion to approve a bankruptcy trustee's decision to liquidate property under 11 U.S.C. § 363(b), has recently concluded that the Court must consider the value of the property proposed to be sold at the time of the hearing, not the value at the time the contract for sale was reached. *In re Fairfield Sentry Ltd.*, 768 F.3d 239, 247 (2d Cir. 2014); *id.* at 246 (holding that a federal court is obligated to "expressly find from the evidence presented before [it] at the hearing a good business reason to grant such an application") (quoting *Lionel*, 722 F.2d at 1071). Thus, the Court must consider the Revised Zanhav Bid in connection with the Receiver's motion. In view of the clearly superior terms offered in the Revised Zanhav Bid for the Abdala Tailings Project, the Court cannot approve the sale of Abdala to Centerbridge on the terms summarized in the Receiver's motion.

Objectors recognize that the Receiver and her team have "spent significant time analyzing the legal, financial, regulatory and business issues relating to the Abdala Tailings Project," and do not intend to add unnecessarily to the Receiver's efforts. (ECF No. 354 at 20.) But the sale of the Receivership's most valuable asset at a discount of between 9% and 14.5% to

that offered by Zanhav is not in the best interests of the Receivership, is not the best way for the Receiver to ensure the maximization of the Receivership's assets, and is certainly not a proper exercise of the Receiver's discretion.

CONCLUSION

For the foregoing reasons, the Court should deny the Receiver's motion for approval of the sale of Abdala and direct her to continue the bidding process for a time sufficient to consider fully Zanhav's superior bid.

Dated: New York, New York
August 3, 2018

DECHERT LLP

By: _____
Neil A. Steiner

1095 Avenue of the Americas
New York, New York 10036
neil.steiner@dechert.com
Tel.: (212) 698-3822
Fax: (212) 698-0480

Attorneys for Objectors
Zanhav Holding LLC and Piping Brook LLC

Exhibit 1

EXECUTION COPY

ZANHAV HOLDINGS LLC
c/o Gabriel Capital Corp.
445 Park Avenue, 17th Floor
New York, NY 10022

July 17, 2018

Richard Saltzman
Senior Vice President
Houlihan Lokey
245 Park Avenue, 17th Floor
New York, NY 10167

Re: Supplemental Proposal | Project Midas

Dear Rich:

Reference is made to that certain letter dated as of July 3, 2018 from Zanhav Holding LLC (the "Buyer" "us" or "we") to you re: Final Proposal | Project Midas (the "July 3 Letter"). Capitalized terms not defined herein shall have the meaning ascribed to them in the Agreement (as such term is defined in the July 3 Letter).

Further to our telephone conversation on July 12, 2018, we would like to present, for your and Hon. Melanie Cyganowski's (in her capacity as Receiver) consideration, a supplement to the terms our July 3 Letter.

1. Consideration. During our telephone call on July 12, 2018 and July 16, 2018 (the "Calls") you intimated that the Receiver was less focused on the earn-out segment of the price for the Transaction as had been suggested in your earlier guidance to us. As a consequence, we understand that she could consider as more favorable a revised proposal having a larger portion of the proposed consideration to be paid at the Closing. Therefore, we hereby supplement our initial proposal in Section 3 of the July 3 Letter to provide the Receiver with the four Alternatives described below.

   In addition, and consistent with your conversation with Andre Weiss this morning, we are open to discussing granting to the Receiver, for a specified amount of cash payable to the Seller by the Buyer, the right to cancel the Royalty Consideration, which right will be exercisable on the one year anniversary of the Closing.

   To avoid participating in a continuous auction and consistent with your expressed desire for a prompt conclusion to the auction, we are making our proposal, as described below available only until July 19, 2018, at 5 pm, New York time. The failure to accept any Alternative by that time accompanied by an a standard binding agreement to deal with the Buyer exclusively through August 24, 2018, at 5 pm, New York time, would render our entire proposal null and void.

EXECUTION COPY

ZANHAV HOLDINGS LLC
c/o Gabriel Capital Corp.
445 Park Avenue, 17th Floor
New York, NY 10022

Alternatives	Upfront Payment Amount	Royalty Consideration
A	**$15,000,000**	**15% of the gold extracted from the Abdala Tailings Dam after the Buyer has extracted gold from the Abdala Tailings Dam of the following amount (the "Threshold Amount") of 41,000 ounces**
B	**$17,500,000**	**10% above the Threshold Amount of 45,000 ounces**
C	**$20,000,000**	**5% above the Threshold Amount of 49,000 ounces**
D	**$22,500,000**	**Zero**

.

2. Execution Risk. During the Call, Paul and you also highlighted the Receiver's consideration of the likelihood of achieving the royalty consideration and project execution risks. It seemed that the Receiver might not fully appreciate the capabilities of the Buyer. Zanhav Holding LLC is an investment vehicle to be jointly owned by affiliates of J. Ezra Merkin and Daniel Posen.

Mr. Merkin has been a major figure in numerous investment management ventures and served as Chairman of the Board of GMAC and currently serves as Chairman of the Board of Samus Therapeutics Inc. Samus Therapeutics is a privately held Boston-based biopharmaceutical company developing novel therapeutics targeting the epichaperome, a foundational protein complex emergent from multiple disease states, including cancer and neurological disorders, such as Alzheimer's, Parkinson's and chronic traumatic encephalopathy.

Mr. Posen has been consulting with Mr. Merkin on the Transaction for some months. About two months ago, Mr. Posen agreed to invest in the Transaction. Mr. Posen, whose bio we have already provided to you, has thirty years of experience in natural resources and metallic trading. He is a founding partner of Trafigura Group Pte. Ltd ("Trafigura"), one of the world's leading independent commodity trading and logistics houses. Mr. Posen was for several years also co-head of Metals and Minerals worldwide of Trafigura. With over $50 billion in assets, Trafigura had over $135 billion in revenues and $2.2 billion in profits in 2017.

ZANHAV HOLDINGS LLC
c/o Gabriel Capital Corp.
445 Park Avenue, 17th Floor
New York, NY 10022

Over the past decades, Trafigura has developed significant experience in trading natural resources and running logistic businesses across the globe, including in Latin America and, in particular, in Brazil. Trafigura's mining division currently holds investment in iron ore mining and processing operations and a seaport in Brazil. As a substantial investor in the Buyer, Mr. Posen will be incentivized to bring his decades of experience in support of the Buyer. He can be expected to draw on his numerous relationships to assist the Buyer with on the ground seasoned Brazilian personnel as well.

As you know, Elliot Bertram will lead the Buyer, and JDS Energy & Mining, Inc., will serve as developer and contractor for the Buyer. Both Mr. Bertram and JDS have been enthusiastically recommended by the Receiver.

We are confident that we have put together an exceptional team with our shareholders, proposed CEO and operator who possess the financial capability, experience and expertise to quickly and efficiently exploit the Tailings Rights and to maximize the value of the royalty consideration outlined in our Proposal.

3. Timing to Signing. Based on the feedback received from Houlihan Lokey regarding the Agreement earlier this week, we remain confident that our attorneys and the Receiver's attorneys can work expeditiously to quickly finalize and execute the Agreement.

4. Contact Information. If you have any questions on this letter, please contact Andre Weiss at 917-355-8100 or andre.weiss.riverside@gmail.com.

5. Expiration. As indicated above, our proposal, unless extended in writing by us, expires on July 19, 2018 at 5:00pm New York time (the "Expiration").

Except as expressly amended or modified hereby, all of the terms and provisions of the July 3 Letter shall remain unchanged and in effect in accordance with its terms.

If you are in agreement with the terms in this proposal, as supplemented by this letter, and desire to proceed with the Transaction on that basis, please execute this letter in the space provided below, indicating which consideration alternative you wish to pursue, and return an executed copy together with an exclusivity agreement as described above to Andre Weiss, c/o Gabriel Capital Corp, 445 Park Avenue, 17th Floor, New York, NY 10022.

EXECUTION COPY

ZANHAV HOLDINGS LLC
c/o Gabriel Capital Corp.
445 Park Avenue, 17th Floor
New York, NY 10022

Very truly yours,

ZANHAV HOLDINGS LLC

By: /s/ J. Ezra Merkin
J. Ezra Merkin
Authorized Signatory

Agreed to and accepted as of the date set forth below as to Alternative __ by:

PLATINUM PARTNERS CREDIT
OPPORTUNITIES MASTER FUND LP

By: _____
Name: Hon. Melanie Cyganowski
Title: Receiver
Date:

WEST VENTURES LLC

By: _____
Name:
Title:
Date:

ZANHAV HOLDINGS LLC
c/o Gabriel Capital Corp.
445 Park Avenue, 17th Floor
New York, NY 10022

July 3, 2018

Rich Saltzman
Senior Vice President
Houlihan Lokey
245 Park Avenue, 17th Floor
New York, NY 10167

Re: Final Proposal | Project Midas

Dear Rich:

We are pleased to present, for your and Hon. Melanie Cyganowski's (in her capacity as Receiver) consideration, the following proposal for the Transaction (as such term is defined below). Capitalized terms not defined herein shall have the meaning ascribed to them in the Agreement (as defined below).

As you are aware, we have dedicated substantial time and resources to this process. Our efforts have confirmed our initial view that the Transaction represents a good investment opportunity (albeit with substantial risks) for us and our affiliates ("Buyer," "us" or "we").

In the following sections, we have outlined our proposal in terms of both valuation and structure.

1. Transaction Structure. As discussed with you and Sellers' counsel, we propose to acquire all the issued and outstanding membership interests of a newly formed Delaware limited liability company (or other mutually agreeable entity) (the "Company"), free and clear of all encumbrances (the "Transaction"). We understand that the Company is newly-formed, without any assets or liabilities, contingent or otherwise. Upon signing the Agreement (as defined below), the Company will consist of, solely as a consequence of a contribution to the Company by Platinum Partners Credit Opportunities Master Fund LP ("Platinum") and West Ventures LLC (the "Seller") (i) all the issued and outstanding equity interests (other than to the extent necessary to comply with Brazilian law) of Sul Real XXXII Participações Ltda., a Brazilian limited liability company (and indirectly, the 10-year mining right to the Abdala Tailings Dam) (the "Tailing Rights"), and (ii) all other assets, rights and agreements related to the Tailing Rights, including the settlement agreement entered into between the Sellers and Reginaldo Luiz Ferreira de Almeida - ME, any underlying or contingent credit right and the rights of exploration of the Abdala Tailings Dam.

2. Consideration. We propose to pay for the Company a total purchase price comprised of (i) a $15,000,000.00 payment in cash at Closing, and (ii) a royalty consideration of the cash proceeds from the sale of 15% of the gold extracted from the Abdala Tailings Dam after the Buyer has extracted 41,000 ounces of gold from the Abdala Tailings Dam, as more fully described in the Agreement (as defined below).

We believe that the commencement of Seller's earn-out only after the Buyer has extracted 41,000 ounces of gold from the Abdala Tailings Dam for its own account and the percentage proposed for the royalty consideration are commensurate with the risks and uncertainties of the Transaction. Our view is supported by the rejection of the proposal made by the prior receiver for Platinum to have the Seller exploit this opportunity for its own account, the failure by the current Receiver to seek to fund the gold extraction operations envisioned by the Transaction and the various judicial remarks strenuously disputing the viability of this opportunity.

Based upon the Seller's projections included in the data room, the Seller should, under our proposal, receive royalty consideration when combined with the Closing price of in excess of $100,000,000.00 over the life of the Tailing Rights operations.

3. Purchase, Sale and Royalty Agreement. Our mark-up of the auction draft of the Purchase, Sale and Royalty Agreement provided to us (the "Agreement") is included as Exhibit A to this letter. We are prepared and willing to promptly execute the attached version of the Agreement, subject to the acceptable resolution of the issues noted in our mark-up and finalization of the related disclosure schedules, exhibits and closing documents.

4. Absence of Deal Specific Contingencies. We will use the available liquidity of Buyer's principals to fund the Transaction. Moreover, this proposal does not contain a financing contingency or any condition relating to any further assessment of the Tailings Dam or the receipt of pending licenses or permits.

5. Timing to Sign and Close. Our proposal has received all necessary internal consents and approvals. Since we do not require any further governance or approval of any equity holders, board or outside investment committees, we can move to signing and closing quite expeditiously. Subject to the terms of this letter (including this Section 5), we are confident that we could finalize and execute definitive documentation for the Transaction within two (2) weeks of the countersigning of this letter by the sellers and close shortly after the receipt of the final and unappealable Approval Order, assuming that no further regulatory approvals become necessary after the date hereof.

   Please note that, in addition to the conditions set forth in this letter, our obligation to consummate the Transaction will be conditioned upon the verification of standard and customary closing conditions described in detail under Article VI of our mark-up of the Agreement.

6. No New Information. We have completed our legal and business due diligence review for the Transaction. We are assuming that the Disclosure Schedules and Exhibits to the Agreement will not contain any material information not disclosed during the due diligence process. Should this not be the case, we reserve the right to conduct additional diligence to clarify and address any new points of concern.

7. Additional Documents. We are pleased to inform you that, as further proof of our dedication to closing the deal expeditiously, we have finalized all substantive terms and the language of a (i) long-term Employment Agreement by and between Buyer and Mr. Elliot Bertram and (ii) agreements with JDS Energy & Mining, Inc., its Brazilian subsidiary and an affiliate

covering the engineering, procurement and construction of the tailings plant and the operations thereof for the anticipated life of the operations. We will be prepared to execute those agreements concurrently with the signing of the Agreement by the relevant parties.

8. Exclusivity. We would typically expect a commitment to exclusivity from the Seller for a period of twenty-one (21) days upon acceptance of our proposal, but we understand that the grant of exclusivity may not be part of the bid process of the Transaction. However, the offer herein will terminate and be of no further force or effect upon your having agreed to any exclusivity or any in principle understanding with any other prospective party concerning the Transaction or the Tailing Rights.

9. Reimbursement of Expenses. Pursuant to our prior communications with Houlihan Lokey, and in consideration of the significant efforts and resources dedicated by us in preparing this letter and the attachments hereto, you hereby agree to reimburse us for all our third-party due diligence expenses (including reasonable fees and expenses of counsel, accountants, investment bankers, experts and consultants to a party hereto and its affiliates) up to $50,000 ("Reimbursement"). We believe that it is obvious from our efforts that you have observed over the past several months that our expenses to date are already well in excess of $50,000. If you accept our proposal, the Reimbursement will be due to us upon Closing as a deduction to the Closing Purchase Price. In the event (i) you reject or fail to accept our proposal on or before the Expiration (defined below), (ii) you grant exclusivity or reach any agreement or understanding in principle with any other person concerning the Transaction or the Tailing Rights, or (iii) you consummate a Transaction or any similar transaction involving the Tailing Rights with other person (each, a "Refusal"), you shall pay the Reimbursement to us promptly by wire transfer of immediately available funds in the amount of $50,000 to the account provided to you by separate e-mail following such Refusal.

10. Disclosure. This letter and the discussions between the parties related to the Transaction will be considered Confidential Information as defined in and protected by the Non-Disclosure Agreement previously signed by the parties on December 20, 2017 (the "NDA"). For avoidance of doubt, the confidentiality obligations under the NDA shall apply to you, *mutatis mutandis*, with respect to such information.

11. Laws. This letter shall be governed by and construed in accordance with New York law.

12. Contact Information. If you have any questions on this letter, proposal or our mark-up of the Agreement, please contact Andre Weiss at 917-355-8100 or andre.weiss.riverside@gmail.com.

13. Expiration. This proposal expires, unless extended in writing by us, on July 17, 2018 at 5:00pm New York time (the "Expiration").

Please note that this letter is a binding offer with respect to the Transaction subject to the terms and conditions set forth herein and to the execution of the Agreement in the terms proposed in Exhibit A hereto. We and our advisors are ready and available to finalize and execute the Agreement upon our selection as the successful bidder.

[SIGNATURE PAGE FOLLOWS]

If you are in agreement with the terms in the proposal set forth in this letter and desire to proceed with the Transaction on that basis, please execute this letter in the space provided below and return an executed copy to Andre Weiss, c/o Gabriel Capital Corp, 445 Park Avenue, 17th Floor, New York, NY 10022.

Very truly yours,

ZANHAV HOLDINGS LLC

By: _____
J. Ezra Merkin
Authorized Signatory

Agreed to and accepted as of the date set forth below by:

PLATINUM PARTNERS CREDIT
OPPORTUNITIES MASTER FUND LP

By: _____
Name: Hon. Melanie Cyganowski
Title: Receiver
Date:

WEST VENTURES LLC

By: _____
Name:
Title:
Date:

Exhibit A

Mark up of Purchase, Sale and Royalty Agreement

[PROJECT MIDAS ~~– Otterbourg~~ - Dechert draft dated ~~April 2,~~ July 3, 2018]

PURCHASE, SALE AND ROYALTY AGREEMENT

~~between~~
among

PLATINUM PARTNERS CREDIT OPPORTUNITIES MASTER FUND LP,

WEST VENTURES LLC,

MELANIE L. CYGANOWSKI,
solely in her capacity as Receiver,

and

~~[BUYER NAME]~~
ZANHAV HOLDING LLC
dated as of

[●], 2018

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PURCHASE AND SALE AGREEMENT

This Purchase, Sale and Royalty Agreement (this "**Agreement**"), dated as of **[●]**, 2018 (the "**Execution Date**"), is entered into ~~between~~ among WEST VENTURES LLC, a Delaware limited liability company ("**Seller**"), PLATINUM PARTNERS CREDIT OPPORTUNITIES MASTER FUND LP, a Delaware limited partnership ("~~**Seller**") and [●], a [●] [●]~~**Parent**"), Melanie L. Cyganowski, solely in her capacity as Court-appointed receiver in the Receivership Action ("**Receiver**") and solely with respect to the applicable Sections of ARTICLE V, and ZANHAV HOLDING LLC, a Delaware limited liability company ("**Buyer**").

Recitals

WHEREAS, Parent owns all of the issued and outstanding equity interests of Seller, and Seller owns all of the issued and outstanding membership interests (the "**Membership Interests**") of ~~WEST VENTURES LLC~~**[●]**, a Delaware limited liability company (the "**Company**");~~ and~~

WHEREAS, the Company owns both all of the issued and outstanding equity interests of Sul Real XXXII Participações Ltda., a limited liability company formed under the laws of Brazil (the "**Subsidiary**") and all of the Assigned Assets;

WHEREAS, Seller wishes to sell to Buyer, and Buyer wishes to purchase from Seller, the Membership Interests, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS

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

"**Acquisition Proposal**" means any offer or proposal (other than an offer or proposal made or submitted by or on behalf of Buyer or any Affiliate thereof) related to an Acquisition Transaction.

"**Acquisition Transaction**" means any transaction or series of related transactions with or by a Person or "group" (as defined in the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder) other than Buyer or any Affiliate thereof involving or relating to the acquisition of any of the Assigned Assets or the Equity Interests in, any of the assets, revenue, net income, Business of, Seller, Parent, the Company or the Subsidiary, or exploitation or development of all or portion of the Intended Business, in each case, pursuant to a merger, reorganization, recapitalization, consolidation or other business combination, sale of shares of capital stock, sale of assets, license of rights, contractual arrangement or other similar transaction involving Seller, Parent, the Company, or the Subsidiary or any of their rights or assets.

"**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.

"**Affiliated Transactions**" has the meaning set forth in Section 3.10.

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

"**Anticorruption and Related Laws**" means any law, statute, treaty, rule, regulation, decision, decree, award or other order issued by a Governmental Authority with regard to anticorruption, anti-money laundering and sanctions, including but not limited to Brazilian Law No. 12,846/13, regulated by Decree No. 8,420/15 (Anti-corruption Law), Brazilian Law No. 12,813/13 (Conflict of Interest Law), Brazilian Law No. 12,529/11 (Antitrust Law), Brazilian Law No. 8,429/1992 (Improbity Administrative Law), Brazilian Law No. 8,666/93 (Bidding Law), U.S. Foreign Corrupt Practices Act of 1977, as amended (FCPA) and the U.K. Bribery Act of 2010 (UKBA).

"**Approval Order**" means an order, stipulation or docket entry of the Court in the Receivership Action, approving and/or consenting to the transactions set forth in this Agreement~~.~~, in the form attached hereto as Exhibit B.[1]

"**Assigned Assets**" means, (i) the Settlement Agreement, (ii) the Credit Agreements, (iii) all other assets and rights related to the Intended Business, free and clear of all Encumbrances (iv) all of the books and records of the Company, of the Subsidiary and of the Seller, to extent related to the Company or the Subsidiary.

"**Brazilian GAAP**" means generally accepted accounting principles in Brazil, consistently applied.

"**Business**" means collectively, the Current Business and the Intended Business.

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

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

"~~**Capital Expenditures**" means the capital expenditures incurred by Owner, after the commencement of Commercial Production, calculated in accordance with generally accepted accounting principles, excluding any exploration expenditures.~~**Buyer Indemnified Party**" has the meaning set forth in Section 7.02.

"**Closing**" has the meaning set forth in Section ~~2.05.~~2.05.

"**Closing Date**" has the meaning set forth in Section ~~2.05.~~2.05.

[1] NTD: To be drafted.

"**Closing Purchase Consideration**" has the meaning set forth in Section ~~2.02.~~2.02.

"**Commercial Production**" ~~shall be deemed to have commenced the first day following any period during which Mineral Products have been processed from the Property for the purpose of earning revenues~~means the processing of the tailings to produce commercial grade gold from the Property at the Tailings Reprocessing Facility.

"**Company**" has the meaning set forth in the recitals.

"**Company Contracts**" has the meaning set forth in Section 3.12.

"**Competing Bidder**" has the meaning set forth in Section 5.10.

"**Confidentiality Agreement**" means the Confidentiality Agreement, dated as of ~~[●], 2018,~~December 20, 2017, between Buyer ~~and~~, Seller and certain Affiliates of Seller.

"**Contract**" means any written or oral agreement, contract, indenture, lease, instrument, arrangement, commitment or obligation that is legally binding (in each case, including any amendments and modifications thereto).

"**Court**" means the United States District Court for the Eastern District of New York.

"**Credit Agreements**" means (A) the underlying credit agreements and related security documents that originated the lawsuit n. 47340-77.2013.811.0041, brought at the Mato Grosso State Courts, including all the following agreements assigned to the Seller under that certain Assignment and Assumption Agreement by and among Resources Holding Inc. and Seller, dated March 14, 2013 and all other rights assigned under such Assignment and Assumption Agreement: (i) Quota Pledge Agreement dated September 21, 2011, by and among Resource Holdings, Inc., Seller and RHI Mineração Ltda., (ii) Amendment to Quota Pledge Agreement dated November 9, 2012, by and among Resource Holdings, Inc., Seller and RHI Mineração Ltda., (iii) First Lien and Second Lien Equipment Pledge Agreement dated September 21, 2011, by and among Reginaldo, Resources Holdings, Inc. and Seller, (iv) Amendment No. 1 to First Lien and Second Lien Equipment Pledge Agreement dated November 9, 2012, by and among Reginaldo, Resources Holdings, Inc. and Seller, (v) First Lien and Second Lien Pledge Agreement of Movable Assets Derived From Mining Activities dated September 21, 2011, by and among Reginaldo, Resouces Holdings, Inc. and Seller, (vi) Amendment No. 1 to First Lien and Second Lien Pledge Agreement of Movable Assets Derived From Mining Activities dated November 9, 2012, by and among Reginaldo, Resouces Holdings, Inc. and Seller, (vii) Loan Agreement dated September 21, 2011, by and among Reginaldo and Resources Holdings, Inc., (viii) Amendment No. 1 to Loan Agreement dated November 9, 2012, by and among Reginaldo, Resources Holdings, Inc. and West Ventures, LLC., (ix) Option Agreement dated September 21, 2011, by and among Reginaldo, Resources Holdings, Inc. and Seller, and (x) Amendment No. 1 to Option Agreement dated November 9, 2012, by and among Reginaldo, Resources Holdings, Inc. and Seller; and (B) the credits arising from the loan agreement entered into by and between West Ventures, LLC. and Amaury Braga Calixto on June 15, 2018.

"**Current Business**" means the ownership of the rights to the Mineral Products on the Property and the rights to processing and beneficiation of such Mineral Products at the Tailings Reprocessing Facility Site and the sale of such processed and beneficiated Mineral Products.

"**Current JDS Agreement**" means that certain "Tailings Reprocessing Facility Engineering Procurement and Construction ("EPCM") Management Services Agreement", dated as of July 12, 2016, pursuant to which JDS Energy & Mining Inc. agreed to provide the subsidiary with services pertaining the engineering, procurement and construction of the Tailings Reprocessing Facility.

"**Data Room**" means the electronic documentation site titled "Project Midas" relating to the Company established by Intralinks, Inc. on behalf of Seller, to which Buyer and its Representatives have been provided access.

"**Deposit**" has the meaning set forth in Section 2.03(a).

"**Direct Claim**" has the meaning set forth in Section 7.05(c).

"**Disclosure Schedules**" means that certain Schedules delivered by Parent and Seller to Buyer in connection with the execution of this Agreement, setting forth, among other things, items whose disclosure is necessary or appropriate either (a) in response to an express informational requirement contained in this Agreement or (b) as an exception to one or more representations and warranties made by, or covenants of, Seller and Parent under this Agreement.

"**Dollars or $**" means the lawful currency of the United States.

"**Draft Allocation**" has the meaning set forth in Section 5.09.

"**Drop Dead Date**" means the date that is one hundred twenty (120) calendar days after the Execution Date~~, unless extended by mutual written agreement of the Parties~~; provided that such date may be extended by an additional one hundred twenty (120) calendar days, at Buyer's sole discretion, in the event that on the date that is one hundred twenty (120) calendar days after the Execution Date all of the conditions set forth in Sections 6.01 and 6.02, other than the conditions set forth in Section 6.01(a), Section 6.02(d), Section 6.02(e) and/or Section 6.02(h), have been satisfied or waived.

"**Elliot Employment Agreement**" means that certain "Employment Agreement" by and between Mr. Elliot Bertram and Buyer (or an Affiliate) executed as of the date hereof to be effective upon Closing.

"**Encumbrance**" means any material lien, pledge, mortgage, deed of trust, security interest, charge, claim, easement, encroachment or other similar encumbrance, lease, sublease, right of first refusal, right of first offer, marital or community property interest or restriction of any kind, including any restriction on use, voting (in the case of any security), transfer, receipt of income or exercise of any other attribute of ownership, in each case, whether voluntarily imposed or arising by operation of Law.

"**Equity Interests**" means, with respect to any Person, (a) any share, partnership or membership interest, unit of participation or other similar interest (however designated) in such

Person, (b) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, such Person, any subscriptions, calls, warrants or options of any kind entitling a Person to purchase or otherwise acquire shares, partnership, or membership interests, units of participation or other similar interests, or any other equity securities of such Person (including phantom share, share appreciation, profit participation or other similar rights), (c) any securities convertible into or exercisable or exchangeable for shares, partnership or membership interests, units of participation or any other equity securities of such Person, or (d) any other interest classified as an equity security of such Person.

"**Excess Gold Ore**" means all Subject Gold extracted from the Property by the Owner in excess of the Gold Extraction Hurdle.

"**Excess Termination Payments**" has the meaning set forth in Section 8.03(a)(ii).

"**Escrow Account**", "**Escrow Agent**" and "**Escrow Agreement**" have the respective meanings set forth in Section 2.03(a).

"**Execution Date**" has the meaning set forth in the preamble.

"~~**GAAP**" means generally accepted accounting principles in the United States, consistently applied.~~**Facility Site Lease**" means that certain Rural Lease Agreement dated June 5, 2018, by and among, on the one hand, Joe Moacir Witczak, Joe Moacir Witczak Junior, Josiane Maria Witczak Soares, collectively as "Lessor", and the Subsidiary, with respect to the lease of the Tailings Reprocessing Facility.

"**Final Allocation**" has the meaning set forth in Section 5.09.

"**Financial Statements**" has the meaning set forth in Section 3.06.

"**Fundamental Representations**" means (a) with respect to Seller and Parent, the representations and warranties set forth in Section 3.01, Section 3.02, Section 3.03, Section 3.04, Section 3.05, Section 3.07, Section 3.17, and (b) with respect to Buyer, the representations and warranties set forth in Section 4.01, Section 4.02, Section 4.04.

"**Gold Extraction Hurdle**" means the production of 41,000 troy ounces of commercial grade gold extracted from the Property by the Owner.

"**Governing Documents**" means, with respect to any particular entity, its constituent or governing documents, including: (a) if a corporation, its articles or certificate of incorporation and bylaws; (b) if a general partnership, its partnership agreement and any statement of partnership; (c) if a limited partnership, its limited partnership agreement and certificate of limited partnership; (d) if a limited liability company, its articles of organization and operating agreement or limited liability company agreement; (e) with respect to any Person, any other charter or similar document adopted or filed in connection with the creation, formation or organization of such Person; and (f) any amendment or supplement to any of the foregoing.

"**Governmental Authority**" means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or

quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

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

"**Held Licenses**" has the meaning set forth in Section 3.09(a).

"**Indemnification Basket**" has the meaning set forth in Section 7.04(a).

"**Indemnification Cap**" has the meaning set forth in Section 7.04(b).

~~"**Indemnification Deductible**" has the meaning set forth in 7.04(a).~~

"**Indemnified Party**" has the meaning set forth in Section 7.04.

"**Indemnifying Party**" has the meaning set forth in Section 7.04.

"**Intended Business**" means the removal of Mineral Products from the Property, the transportation of Mineral Products from the Property to the Tailings Reprocessing Facility, the reprocessing and beneficiation of Mineral Products at the Tailings Reprocessing Facility Site and the sale of such reprocessed and beneficiated Mineral Products.

"**JeffCo Agreement**" means that certain Asset Purchase Agreement executed by and between the Subsidiary and Jeffco Equipment Inc., dated July 12, 2016, with respect to the purchase of certain assets to be used in the construction of the Tailings Reprocessing Facility.

"**Key Agreements**" means, (i) the Usufruct, (ii) the Settlement Agreement, (iii) the Current JDS Agreement, (iv) the JeffCo Agreement; (v) the Facility Site Lease and (vi) Memorandum of Understanding.

"**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.

"**Leased Real Property**" has the meaning set forth in Section 3.08.

"**Licenses**" means any licenses, approvals, consents, notices, waivers, qualifications, filings, registrations, exemptions and authorizations by or of, or registrations with, any Governmental Authority.

"**Losses**" means ~~actual out-of-pocket~~all losses, damages, liabilities, Taxes, costs, fines, penalties, obligations or expenses, including ~~reasonable~~ attorneys' fees, excluding punitive and exemplary damages except to the extent awarded or paid pursuant to any Third Party Claim.

"**Material Adverse Effect**" means any event, circumstance, change, development, fact, effect or condition that, individually or in the aggregate is or is reasonably likely to be materially adverse to the assets, properties, condition, Business, (including the Intended Business) or results

of operations of the Company and the Subsidiary taken as a whole, or that prevents Parent or Seller from consummating, or materially impairs or delays the ability of Parent or Seller to consummate, the transactions contemplated by this Agreement; provided, however, that none of the following changes will constitute, or will be considered in determining whether there has occurred, and no event, circumstance, change, development, fact, effect or condition resulting from or arising out of any of the following will constitute, a Material Adverse Effect: (a) an event or circumstance or series of events or circumstances affecting (i) the United States, Brazil or global economy generally or capital, credit or financial markets generally, including changes in interest or exchange rates, (ii) political conditions of the United States or Brazil, or (iii) the mining industry; (b) the announcement of the transactions contemplated by this Agreement; (c) any actual or proposed changes in applicable Law, U.S. GAAP, Brazilian GAAP, or the enforcement or interpretation thereof; (d) actions taken with Buyer's express written consent delivered after the date hereof; (e) any acts of God; (f) any hostilities, acts of war, sabotage, terrorism or military actions, or any escalation or worsening of any such hostilities, act of war, sabotage, terrorism or military actions; or (g) any failure in and of itself to meet projections of revenues, earnings, or other measures of financial or operating performance (it being understood and agreed that the facts and circumstances that may have given rise or contributed to such failure may be considered (so long as they are not otherwise excluded from the definition of Material Adverse Effect)); provided that, in the case of clauses (a), (c), (e) and (f), such change, effect, event, occurrence or development shall not be excluded from a determination of whether a Material Adverse Effect has or would reasonably be expected to have occurred to the extent it has a materially disproportionate effect on the business of the Company and the Subsidiary, taken as a whole, as compared to other similarly situated participants in the industry in which such Persons operate.

"**Membership Interests**" has the meaning set forth in the recitals.

"**Memorandum of Understanding**" means the agreement entered into by and between Subsidiary and A R Weber ME on June 5, 2018, with respect to the cooperation in the installation and operation of the Tailings Reprocessing Facility.

"**Mineral Products**" means ~~any and all ores, concentrates, dore, metals and other products~~the gold ores extracted, derived or produced from the Property (including all tailings thereon), directly or indirectly~~, whose value is principally dependent upon precious, base or industrial minerals, including without limitation gold~~.

"~~**Net Operating Profit**" shall be calculated in accordance with GAAP for each calendar quarter after commencement of Commercial Production and means the aggregate of the Revenues received during such calendar quarter, less:~~**New JDS Agreements**" means, collectively, that (i) Services Agreement dated as of as of the date hereof, by and among JDS Energy & Mining Inc., JDS Energia e Mineracao do Brasil Ltda. and Buyer, and (ii) Asset Purchase Agreement dated as of as of the date hereof, by and among Jeffco Equipment Inc. and Buyer, in each case, to be effective as of the Closing.

~~(A) all or part of the aggregate amount (if any) by which Operating Costs for any prior calendar quarter or calendar quarters exceed such Revenues received during such prior calendar quarter or calendar quarters; and~~

(B) the aggregate of all Operating Costs allocable to such calendar quarter;

but for greater certainty, the following shall **not** be deducted for the purpose of determining Net Operating Profit:

(C) any amounts paid in respect to the acquisition of the Membership Interests and the Company;

(D) any amount in respect of required working capital to carry on operations on the Property; and

(E) any reserves for contingencies.

"**Operating Costs**" means, for any calendar quarter, the amount of expenditures or costs incurred by Owner in such calendar quarter and after the commencement of Commercial Production in connection with carrying on the business of Owner related to the mining, milling, and/or other treatment of ores or concentrates and/or marketing any Mineral Products resulting from operations upon the Property, including, without limitation, the following costs:**Notice Period**" has the meaning set forth in Section 5.10.

(A) the costs incurred in the mining, crushing, handling, concentrating, smelting, refining or other treatment of such ores or concentrates, the handling, treatment, storage or disposal of any waste materials and/or tailings arising with respect thereto, and the operation, maintenance and/or repair of any mining, milling, handling, treatment or storage facilities related to the carrying on of such business;

(B) the costs incurred in the marketing of any Mineral Products, including transportation, commissions and/or discounts;

(C) the costs incurred in maintaining in good standing or renewing from time to time the Company's interest in the Property;

(D) the costs incurred in providing and/or operating employee facilities for employees of the business;

(E) the duties, charges, levies, royalties, taxes (other than taxes computed upon the basis of the income of any of the parties hereto) and other payments imposed upon such business or the carrying on of such business by any government or municipality or department or agency thereof;

(F) the reasonable third party costs and fees payable for technical, management and/or supervisory services;

(G) the costs of financing arrangements relating to operations upon the Property which arise after the date upon which the Property has been brought into Commercial Production, including the payment of interest and/or standby or other fees, but excluding any notional interest accrued on equity contributions of Owner or any interest in respect of loans made to Owner by any Affiliate of Owner or other non-arm's length party;

~~(H) the reasonable third-party costs of consulting, legal, accounting, insurance and other services in connection with the carrying on of such business by Owner; and~~

~~(I) depreciation on Capital Expenditures, calculated in accordance with GAAP;~~

~~**but** for greater certainty the following shall **not** be deducted for the purpose of determining Operating Costs:~~

~~(J) Preproduction Expenditures; and~~

~~(K) Capital Expenditures.~~

"**Owner**" means, from and after the Closing, Buyer or an Affiliate of Buyer (which may be the Company or the Subsidiary) that is the operating company of the Intended Business.

"~~**Owner**" means the Company, the Buyer and their respective Affiliates that directly or indirectly conduct the business related to the mining, milling and/or other treatment of ores or concentrates and/or marketing any Mineral Products resulting from operations upon the Property, including the successors and assigns of the foregoing entities.~~**Parent**" has the meaning set forth in the preamble.

"**Party**" or "**Parties**" means Buyer ~~and~~, Seller and Parent.

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

"~~**Preproduction Expenditures**" means the aggregate of expenditures and costs (whether of a capital nature or otherwise) incurred prior to the commencement of Commercial Production, related to the exploration or development of the Property, the bringing of the Property into Commercial Production and the construction of facilities and/or services (whether located on or off the Property) related thereto, including, without limitation:~~**Pre-Closing Liabilities**" has the meaning set forth in Section 7.02.

~~(A) the costs of prospecting, exploration, development and/or other mining work on the Property, including exploration expenditures incurred;~~

~~(B) the costs of construction of any mine or mill buildings, crushing, concentrating, waste storage and/or disposal and/or other treatment facilities and/or any facilities ancillary thereto;~~

~~(C) the costs of exposing and mining any orebody or orebodies situate in whole or in part on the Property;~~

~~(D) the costs of construction of storage and/or warehouse facilities, the construction and/or relocation of roads, and the acquisition and/or development of waste and/or tailings areas and/or systems;~~

~~(E) the costs (including the costs of acquiring and transporting thereof) of transportation facilities for moving Mineral Products, ore, concentrates and/or any products derived therefrom; electric power, including power lines and equipment; water pipelines, pumps and wells or any other utilities;~~

~~(F) the costs of construction of employee facilities, including housing;~~

~~(G) the costs of supplying of management, marketing, supervisory, engineering, accounting or other technical and/or consulting services or personnel;~~

~~(H) the costs of maintaining of the Property and/or the taking of steps considered advisable by Owner to acquire, protect and/or improve any interest Owner may have or acquire in the Property and/or other properties or property rights;~~

~~(I) the costs of feasibility, marketing, economic, reclamation, rehabilitation and/or technical evaluations, plans, studies or reports;~~

~~(J) the reasonable costs of consulting, legal, insurance, marketing and other services in connection herewith; and~~

~~(K) the costs of financing arrangements relating to bringing the Property or any part thereof into Commercial Production, including, without limitation, the payment of interest (including any notional interest accrued on equity contributions of Owner) standby or other fees or charges.~~

"**Pre-Closing Tax Period**" means any taxable period (or portion thereof) ending on or before the Closing Date.

"**Pre-Closing Taxes**" means, without duplication, any and all (a) liability for Taxes of Seller, Parent and their direct or indirect owners, (b) liability for Taxes (including the nonpayment thereof) of the Company or the Subsidiary for Pre-Closing Tax Periods, and (c) any Taxes that are the responsibility of Seller or Parent pursuant to Section 5.09(e).

"**Property**" means ~~the~~that certain tailings ~~dam of~~in the Abdala ~~gold mine~~Tailings Dam, located in the City of Nossa Senhora do Livramento, State of Mato Grosso, Brazil, more particularly described on Exhibit A attached hereto. ~~"Property" shall include all forms of mineral title into which the Property may be converted by process of Law or otherwise, including mining agreements and leases.~~

"**Proprietary Information**" means all information (whether or not specifically identified as confidential), in any form or medium, of or relating to any of Buyer, the Company, the Subsidiary or their respective business, including: (a) internal business information (including information relating to strategic plans and practices, business, accounting, financial or marketing plans, practices or programs, mining related topics, training practices and programs, salaries, bonuses, incentive plans and other compensation and benefits information and accounting and business methods); (b) identities of, individual requirements of, specific contractual arrangements with, and information about their respective business and the respective customers, distributors, sales agents, contractors and suppliers; (c) any confidential or proprietary information of any third party that any of Buyer, the Company or the Subsidiary has a duty to

maintain confidentiality of, or use only for certain limited purposes; (d) research compiled by, or on behalf of Buyer, the Company or the Subsidiary, including without limitation research related to the Property and the Mineral Products existing in the Property or near the Property; (e) compilations of data and analyses, processes, methods, track and performance records, data and data bases relating thereto; (f) information related to Intellectual Property; and (g) the terms of this Agreement and of the transactions contemplated herein, as well as the discussions and negotiations related to this Agreement; provided that Proprietary Information shall not include any information that has been or becomes generally known or widely available to the public, other than as a result of a breach of this Agreement by Seller, Parent or any of their Affiliates or any acts or omissions of a Person that Seller, Parent or any of their Affiliates has control over.

"**Purchase Price**" has the meaning set forth in Section ~~2.02.~~2.02.

~~"**Receiver**" means Melanie L. Cyganowski, solely in her capacity as Court-appointed receiver in the Receivership Action.~~"**Receiver**" has the meaning set forth in the preamble.

"**Receivership Action**" means the case *Securities and Exchange Commission v. Platinum Management (NY) LLC et al* (16-cv-6848) pending in the Court.

"**Reginaldo**" means Mr. Reginaldo Luiz de Almeida Ferreira - ME, the operator and holder of mining rights and Licenses related to the exploitation of the Abdala gold mine.

"**Related Party**" has the meaning set forth in Section 3.10.

"**Released Claim**" has the meaning set forth in Section 5.15.

"**Released Party**" has the meaning set forth in Section 5.15.

"**Releasing Party**" has the meaning set forth in Section 5.15.

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

~~"**Revenues**" means, for any calendar quarter, the sum of the following:~~**Restricted Period**" means the period commencing on the Closing Date and ending on the 2nd anniversary of the payment of the final installment of the Royalty Consideration.

~~(A) revenue earned by Owner from the sale, deemed sale or other disposal of all Mineral Products in the calendar quarter; and~~

~~(B) other revenue of Owner which is a direct result of the recovery of or a reduction of Operating Costs, including:~~

~~(1) proceeds received from the sale, lease, rental or disposal of plant, buildings, machinery, equipment and lands comprising the Property (less the costs of such sale, lease, rent or disposal except income taxes under federal, provincial or territorial income tax acts) and insurance proceeds from the loss, damage or~~

~~destruction thereof, but only to the extent depreciation has been calculated as an operating cost;~~

~~(2) refunds of reclamation bonds, deposits and taxes, to the extent previously deducted in calculating Net Operating Profit; and~~

~~(3) any business interruption insurance proceeds.~~

"**Reverse Termination Fee**" has the meaning set forth in Section 8.03(b)(i).

"**Royalty Consideration**" has the meaning set forth in ~~Section 2.06.~~Section 2.06(a).

"**Royalty Period**" has the meaning set forth in Section 2.06(b).

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

"~~**Subsidiary**~~**Seller Indemnified Party**" has the meaning set forth in Section ~~3.04.~~7.03.

"**Seller Parties**" has the meaning set forth in Section 5.10.

"**Seller's knowledge**" means the knowledge of any of the following individuals: Mr. Elliot Bertram, the Receiver, and any employees, contractors or representatives of JDS Energy & Mining Inc. or any of its Affiliates that are involved with the Business. For such purpose, an individual will be deemed to have knowledge of a particular fact or matter if (i) that individual is actually aware of that fact or matter or (ii) such individual would reasonably be expected to discover or otherwise become aware of that fact or matter in the course of the reasonable conduct of his duties.

"**Settlement Agreement**" means the settlement agreement entered into by and between the Seller and Reginaldo on January 19, 2016, with respect to Lawsuit n. 47340-77.2013.811.0041, brought at the Mato Grosso State Courts.

"**Subject Gold**" means the commercial grade gold ore extracted from the Property produced at Tailings Reprocessing Facility.

"**Subsidiary**" has the meaning set forth in the recitals.

"**Subsidiary Articles of Association**" has the meaning set forth in Section 3.04.

"**Superior Proposal**" means a bona fide binding written Acquisition Proposal that the Receiver determines in good faith (after consultation with outside counsel and a financial advisor of nationally recognized reputation), taking into account all legal, financial, Tax, regulatory, timing and other aspects of such proposal and the identity of the Competing Bidder making the proposal (a) is reasonably likely to be consummated on the terms proposed, (b) is more favorable from a financial point of view to Seller and Parent than the terms of the transaction contemplated herein and (c) is otherwise on terms that the Receiver has determined to be superior to the transaction contemplated hereby.

"**Superior Termination Fee**" means ten percent (10%) of (i) the gross value of all cash, securities and other property payable by an acquirer and/or its Affiliates in connection with the transaction object of an Acquisition Transaction, (ii) in the case the transaction object of an Acquisition Transaction involves a joint venture or partnership, the gross value of all cash, securities and assets contributed by the parties to such joint venture or partnership, or (iii) in the case the transaction object of an Acquisition Transaction involves a sale or spin-off, the equity value of such spun-off or split-off entity, in each case, including the aggregate principal amount of any indebtedness for money borrowed, if any, of the Company or its subsidiaries assumed, directly or indirectly, whether contractually or by operation of law, in connection with the consummation of such transaction.

"**Tailings Reprocessing Facility**" means the industrial facility necessary for the beneficiation and reprocessing of the Mineral Products, which main characteristics are set forth in Schedule 3.08(b)(i).[2]

"**Tailings Reprocessing Facility Site**" means the area leased by the Subsidiary under the Facility Site Lease, in which the Tailings Reprocessing Facility will be located.

"**Tax Returns**" means all returns, declarations, reports, statements and other documents filed or required to be filed by the Company or the Subsidiary in respect of any Taxes, including any attachments thereto and amendments thereof, and the term "**Tax Return**" means any one of the foregoing Tax Returns.

"**Taxes**" means (i) any and all taxes, customs, duties, governmental fees or other like assessments or charges of any kind whatsoever imposed by any governmental authority, including all U.S. federal, state, local or non-U.S. income (including any tax based upon net income, gross income, income as specially defined, earnings, profits, windfall profits, or selected items thereof), alternative or add-on minimum, gross receipts, estimated, environmental, property, goods and services, stamp, premium, sales, use, ad valorem, harmonized sales taxes, franchise, transfer, gains, license, excise, escheat, unclaimed property, employment, payroll, severance, occupation, withholding or minimum taxes, together with any interest or any penalty, addition to tax or additional amount imposed by any governmental authority, (ii) any liability of any other Person for the payment of any amounts of the type described in clause (i) as a result of being a member of an affiliated, consolidated, combined, unitary or similar aggregate group, as a result of being a transferee or successor, or as a result of any express or implied obligation to assume the responsibility for Taxes of any other person, by contract or otherwise. The term "**Tax**" means any one of the foregoing Taxes.

"**Termination Fee**" has the meaning set forth in Section 8.03(a)(i).

"**Third-Party Claim**" has the meaning set forth in Section 7.05(a).

"**Transaction Documents**" means, collectively, this Agreement dated as of the Execution Date and each instrument of transfer of the Membership Interests dated as of the Closing Date.

"**Transferee Owner**" has the meaning set forth in Section ~~5.09.~~5.08.

[2] NTD: This schedule should reflect the pitchbook included in the Data Room

"**U.S. GAAP**" means generally accepted accounting principles in the United States, consistently applied.

"**Usufruct**" means that certain Public Deed of Usufruct and Other Covenants (*Escritura Pública de Instituição de Usufruto e Outras Avenças*), executed by and among the Subsidiary, Ms. Elenice Thiemann and Reginaldo on April 20, 2016 under which Ms. Elenice Thiemann granted usufruct rights over the Property to the Subsidiary.

ARTICLE II
PURCHASE AND SALE

Section 2.01. ~~Section 2.01 "~~**Purchase and Sale**. Subject to the terms and conditions set forth herein, at the Closing, Seller shall sell to Buyer, and Buyer shall purchase from Seller, the Membership Interests for the consideration specified in Section 2.02.

Section 2.02. ~~Section 2.02 "~~**Purchase Price**. The aggregate purchase price (collectively, the "**Purchase Price**") for the Membership Interests shall be the sum of (a) $~~[●]~~15,000,000 (the "**Closing Purchase Consideration**") and (b) the Royalty Consideration.

Section 2.03. ~~Section 2.03~~ **Escrow**.

(a) ~~On or prior to the Execution Date~~Concurrently with the execution and delivery of this Agreement, Buyer and Seller have entered into an escrow agreement (as amended, supplemented or otherwise modified from time to time, the "**Escrow Agreement**") with a mutually agreed escrow agent (the "**Escrow Agent**"). ~~Concurrently with the execution and delivery of the Escrow Agreement by Seller, Buyer and the Escrow Agent on or before the Execution Date, Buyer deposited [●] ($[●])~~[1]Within two (2) Business Days following the issuance of the Approval Order, Buyer shall deposit $1,000,000 (the "**Deposit**") with the Escrow Agent in the Escrow Account by wire transfer of immediately available funds. The Escrow Agent shall hold the Deposit in a segregated account (the "**Escrow Account**") pursuant to the Escrow Agreement. All interest or other earnings, if any, on amounts held in the Escrow Account pursuant to the Escrow Agreement shall automatically become a part of the Deposit as such interest or earnings accrue.

(b) If this Agreement is validly terminated prior to the Closing, the Deposit in the Escrow Account shall be released and distributed to Buyer or Seller in accordance with Section ~~8.02.~~8.02.

Section 2.04. ~~Section 2.04~~ **Transactions to be Effected at the Closing.**

(a) At the Closing, Buyer shall pay (or shall cause to be paid) to Seller the Closing Purchase Consideration (less the amount of the Deposit) by wire transfer of immediately available funds to an account of Seller designated in writing by Seller to Buyer no later than two (2) Business Days prior to the Closing Date.

~~[1] NTD, the Deposit amount shall be 10% of the Purchase Price (and in no case less than 10% of the Closing Purchase Consideration).~~

(b) ~~(a)~~ At the Closing, Buyer shall deliver to Seller:

~~(i) the Closing Purchase Consideration (less the amount of the Deposit) by wire transfer of immediately available funds to an account of Seller designated in writing by Seller to Buyer no later than two (2) Business Days prior to the Closing Date;~~

(i) ~~(ii)~~ written instructions to the Escrow Agent to immediately release the Deposit to Seller; and

(ii) ~~(iii)~~ any other documents, instruments or certificates required to be delivered by Buyer at or prior to the Closing pursuant to Section 6.03 of this Agreement.

(c) ~~(b)~~ At the Closing, Seller shall deliver to Buyer:

(i) a certificate (or affidavit of lost certificate) evidencing the Membership Interests, free and clear of all Encumbrances, duly endorsed in blank or accompanied by powers or other instruments of transfer duly executed in blank;~~ and~~

(ii) written resignations, effective as of the Closing Date, of the officers and directors of the Company and the Subsidiary designated in writing by Buyer at two (2) Business Days prior to the Closing Date;

(iii) evidence that each agreement or arrangement set forth on Schedule 3.10 has been terminated and that no further payments are due or obligations exist thereunder;

(iv) executed and effective copies of each of the consents, approvals or authorizations in respect of the Contracts, Governmental Authorities or Persons set forth on Schedule 3.05;

(v) certificates, dated as of the Closing Date and signed by the secretary or equivalent officer of Seller, attaching the resolutions duly adopted by its members, managers, directors or shareholders, as applicable, authorizing the execution, delivery and performance of this Agreement, each Transaction Document to which such Person is a party and the consummation of the transactions contemplated hereby and thereby; and

(vi) ~~(ii)~~ any other documents, instruments or certificates required to be delivered by Seller at or prior to the Closing pursuant to Section 6.02 of this Agreement.

Section 2.05. ~~Section 2.05~~ **Closing**. Subject to the terms and conditions of this Agreement, the purchase and sale of the Membership Interests contemplated hereby shall take place at a closing (the "**Closing**") to be held at 10:00 a.m., New York City time, no later than ~~two (2) Business Days~~ten (10) days after the last of the conditions to Closing set forth in ARTICLE VI have been satisfied or waived (other than conditions which, by their nature, are to be satisfied

on the Closing Date), at the offices of Otterbourg P.C., 230 Park Avenue, New York, New York 10169, or at such other time or on such other date or at such other place as Seller and Buyer may mutually agree upon in writing (the day on which the Closing takes place being the "**Closing Date**").

Section 2.06. Royalty Consideration.

(a) ~~Section 2.06 **Royalty Consideration.**~~ In addition to the Closing Purchase Consideration and subject to the terms hereof, Buyer (including its successors and assigns, Owner and any Transferee Owner) hereby grants, transfers and conveys to Seller, and Buyer shall or shall cause the Owner (and any Transferee Owner) to pay Seller during the Royalty Period (subject to Section 2.06(b)), a royalty ~~(the "**Royalty Consideration**")~~ in an aggregate amount equal to ~~[●] percent ([●]%) of Net Operating Profits. The Royalty Consideration shall be paid in accordance with Section 5.07. The covenant of this Section 2.06 shall survive the Closing for so long as Owner (or any Transferee Owner) shall continue to have any mining or mineral rights with respect to the Property.~~ 15% of the Excess Gold Ore produced at the Tailings Reprocessing Facility during the Royalty Period, payable in cash in the amount of the price that Buyer achieves in the ordinary course of its business for the amount of Seller's Subject Gold (the "**Royalty Consideration**").

(b) Subject to the terms of Section 7.08, for each calendar quarter commencing with the quarter in which the Gold Extraction Hurdle is achieved and ending on the earlier of (i) the last quarter in which Commercial Production takes place, or (ii) the date in which the Subsidiary ceases to have real property rights over the Property under the Usufruct as in force on the date of this Agreement (disregarding any and all extensions or other amendments thereof) (the "**Royalty Period**"), Buyer shall pay (or cause to be paid) to Seller the Royalty Consideration.

(c) The Royalty Consideration shall be payable quarterly, within thirty (30) days following the end of the applicable calendar quarter (to the extent any Royalty Consideration is payable for such period). Together with the payment of the Royalty Consideration, Buyer shall deliver (or cause to be delivered) to Seller a statement setting forth Buyer's good faith calculation of the Royalty Consideration applicable for such preceding quarter accompanied by reasonable supporting detail and working papers of such calculations. For avoidance of doubt, any amendments to the Usufruct will be disregarded for the purposes of the definition of Royalty Period.

Section 2.07. ~~Section 2.07~~ **As-Is Where-Is Sale**. THE SALE BY SELLER TO BUYER OF THE MEMBERSHIP INTERESTS HEREUNDER IS ON AN "AS IS" AND "WHERE IS" BASIS, WITH ALL FAULTS AND WITHOUT RECOURSE EXCEPT AS ~~SPECIFICALLY~~EXPLICITLY SET FORTH IN THIS AGREEMENT, INCLUDING AS SET FORTH IN THIS PARAGRAPH. EXCEPT FOR THOSE REPRESENTATIONS EXPLICITLY SET FORTH HEREIN, SELLER AND PARENT MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY AS TO CONDITION, VALUE, DESIGN, QUALITY, OPERATION, SUITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE.

Section 2.08. ~~Section 2.08~~ **Assumption of Liabilities**. ~~Upon~~Without limiting the representations and warranties under Article III or the indemnification obligations under Article VII, upon the terms and subject to the conditions of this Agreement, and except as shall be assumed by Seller or Parent, Buyer shall and hereby does irrevocably assume, and Seller or Parent shall not be responsible for, effective as of the Closing Date (and from and after the Closing Date, Buyer shall pay, perform and discharge when due~~) (a)~~ all obligations, liabilities and commitments arising from acts, facts or events that occur after the Closing Date and relating to or otherwise in any way in respect of the Company and the Membership Interests~~ and (b) all liabilities, obligations and commitments for any taxes arising out of or relating to the transactions contemplated in this Agreement~~.

Section 2.09. **Withholding Taxes**. Buyer shall be entitled to deduct or withhold, or cause to be deducted or withheld, from any amount payable or consideration otherwise deliverable pursuant to this Agreement, such amounts as may be required to be deducted or withheld therefrom under applicable Law. To the extent that any amounts are deducted or withheld pursuant to this Section 2.09, such deducted or withheld amounts shall be treated for all purposes of this Agreement and any other document or agreement related to the transactions contemplated hereunder as having been paid to the Person in respect of which such deduction or withholding was made.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF SELLER AND PARENT

Seller and Parent represents and warrants to Buyer that the statements contained in this ARTICLE III are true and correct~~ in all material respects~~ as of the Execution Date and as of the Closing Date (except as otherwise expressly set forth)~~.~~:

Section 3.01. **Organization and Authority of Seller and Parent**.

(a) Seller is a limited liability company duly organized and validly existing and under the Laws of the State of Delaware. Seller has all necessary power and authority to enter into this Agreement and to carry out its obligations hereunder. Seller is duly qualified to transact business as a foreign limited liability company in each jurisdiction wherein the nature of its business or the ownership of its assets makes such qualification necessary, except where the failure to be so qualified and in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Seller or the Company.

(b) Parent is a limited partnership duly organized and validly existing and under the Laws of the State of Delaware. Parent has all necessary power and authority to enter into this Agreement and to carry out its obligations hereunder. Parent is duly qualified to transact business as a foreign limited partnership in each jurisdiction wherein the nature of its business or the ownership of its assets makes such qualification necessary, except where the failure to be so qualified and in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Parent or the Company.

(c) ~~Section 3.01 **Organization and Authority of Seller.** Seller is a limited partnership duly organized and validly existing and under the Laws of the state of Delaware. Seller has all necessary power and authority to enter into this Agreement and to carry out its obligations hereunder. Upon and after~~Subject solely to the issuance of the Approval Order by the Court, the consummation by Seller and Parent of the transactions contemplated hereby shall have been duly authorized by all requisite action on the part of Seller and Parent other than the issuance of the Approval Order. This Agreement has been duly executed and delivered by Seller and Parent, and (assuming due authorization, execution and delivery by Buyer) this Agreement constitutes a legal, valid and binding obligation of Seller and Parent, enforceable against Seller and Parent in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity).

(d) After giving effect to the Closing, the Seller and its Affiliates will no longer own any assets, rights or properties relating to the Business or the Property.

Section 3.02. ~~Section 3.02~~ **Organization and Authority of the Company**. The Company is a limited liability company duly organized and validly existing under the Laws of the ~~state~~State of Delaware. The Company has all necessary 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 is currently conducted. The Company is duly qualified to transact business as a foreign limited liability company in each jurisdiction wherein the nature of its business or the ownership of its assets makes such qualification necessary, except where the failure to be so qualified and in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company. Seller and Parent have made available to Buyer true and complete copies of the Operating Agreement of the Company and all amendments thereto or restatements thereof (the "**Company Operating Agreement**"). The Company Operating Agreement has been duly authorized by all actions required under applicable Law and under all prior operating agreements of the Company and reflects all amendments made thereto at any time prior to the date of this Agreement. The Company is not in default under or in violation of any provision of its certificate of formation or the Company Operating Agreement. Schedule 3.01 sets forth a list all of the officers, managers and members of the Company.

Section 3.03. ~~Section 3.03~~ **Capitalization**.

(a) Seller is (i) the sole owner of and has good and valid title to 100% of the Membership Interests, free and clear of all Encumbrances and (ii) the sole member of the Company. The Membership Interests constitute 100% of the total issued and outstanding ~~membership interests in~~Equity Interests of the Company. The Membership Interests have been duly authorized and validly issued, and are fully-paid and non-assessable. Upon consummation of the transactions contemplated by this Agreement, Buyer shall own 100% of the Membership Interests, free and clear of all Encumbrances.

(b) There are no outstanding or authorized options, warrants, convertible securities or other rights, agreements, arrangements or commitments of any character relating to the capital stock or ~~membership interests~~Equity Interests of the Company, or

obligating Seller or the Company to issue or sell any capital stock of, or ~~membership interests or any other interest~~Equity Interests in, the Company. The Company does not have and has not at any time had any outstanding or authorized any stock appreciation, phantom stock, profits interest, profit participation or similar rights. There are no preemptive or similar rights to purchase or otherwise acquire any Equity Interest or other equity of the Company pursuant to any provision of Law or any agreement or Contract to which the Company or Seller is a party or by which any of its or their assets is bound; and none of the Company or Seller is a party to, and there is no agreement, Contract, restriction or Encumbrance with respect to the sale or voting of any Equity Interest of the Company other than those imposed by federal and state securities laws. There are no declared or accrued but unpaid dividends with respect to any Equity Interests issued by the Company.

Section 3.04. ~~Section 3.04 **Subsidiaries.** Except for Sul Real XXXII Participacoes LTDA, a wholly-owned subsidiary of the Company duly incorporated under the laws of Brazil (the "**Subsidiary**"), the Company does not own, or have any ownership interest or membership interests in, any other Person. The Company holds 100% of the ownership interest in the Subsidiary, free and clear of all Encumbrances.~~**Subsidiaries.** Except for the Subsidiary, the Company does not own, or have any ownership interest or membership interests in, any other Person. The Company holds 100% of the Equity Interests in the Subsidiary, free and clear of all Encumbrances. There are no outstanding or authorized options, warrants, convertible securities or other rights, agreements, arrangements or commitments of any character relating to the capital stock or Equity Interests of the Subsidiary, or obligating the Company or the Subsidiary to issue or sell any capital stock of, or Equity Interests in, the Subsidiary. There are no preemptive or similar rights to purchase or otherwise acquire any Equity Interest or other equity of the Subsidiary pursuant to any provision of Law or any agreement or Contract to which the Company or the Subsidiary is a party or by which any of its or their assets is bound; and none of the Company or Subsidiary is a party to, and there is no agreement, Contract, restriction or Encumbrance with respect to the sale or voting of any Equity Interest of the Subsidiary other than those imposed by federal and state securities laws. There are no declared or accrued but unpaid dividends with respect to any Equity Interests issued by the Subsidiary. The Subsidiary does not have outstanding or authorized any stock appreciation, phantom stock, profits interest, profit participation or similar rights. The Subsidiary has all necessary 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 is currently conducted. Seller and Parent have made available to Buyer true and complete copies of the Articles of Association (*Contrato Social*) of the Subsidiary and all amendments thereto or restatements thereof (the "**Subsidiary Articles of Association**"). The Subsidiary Articles of Association has been duly authorized by all actions required under applicable Law and under all prior operating agreements of the Subsidiary and reflects all amendments made thereto at any time prior to the date of this Agreement. The Subsidiary is not in default under or in violation of any provision of the Subsidiary Articles of Association. Schedule 3.04 sets forth a list all of the officers, managers and members of the Subsidiary.

Section 3.05. ~~Section 3.05~~ **No Conflicts; Consents**. The execution, delivery and performance by Seller and Parent of this Agreement, and upon and after the issuance of the Approval Order by the Court, the consummation of the transactions contemplated hereby, do not and will not: (a) result in a violation of any provision of the ~~organizational documents~~Governing Documents of Seller, Parent, the Company or the ~~Company~~Subsidiary; (b) result in a ~~material~~

violation of any provision of any Law or Governmental Order applicable to Seller, Parent, the Company or the ~~Company~~Subsidiary; or (c) other than the Approval Order, require the consent by any Government Authority. Except as set forth in Schedule 3.05, no consent, approval, waiver, notice or authorization is required to be obtained by Seller, Parent, the Company or the Subsidiary from, or to be given by Seller, Parent, the Company or the Subsidiary to, or made by Seller, Parent, the Company or the Subsidiary with, any Person other than a Governmental Authority, as a result of the execution, delivery or performance by Seller, Parent, of this Agreement and the Transaction Documents.

Section 3.06. Financial Statements.

(a) Schedule 3.06(a) contains correct and complete copies of (i) the **[**audited**]** balance sheets of Seller and the Subsidiary as of December 31, 2017 and December 31, 2016, **[**and the related audited statements of operations, comprehensive income, cash flows and stockholders' equity for the years then ended, in each case, together with all related notes thereto, accompanied by the report thereon of Seller's and the Subsidiary's independent accountants**]**, and (ii) the Pro-Forma balance sheet of Seller as of the Closing Date (collectively, the "**Financial Statements**").[3]

(b) Each of the Financial Statements (including any related notes and schedules thereto) fairly presents in all material respects the financial position of the Subsidiary as of the date thereof, and each of the statements of operations and cash flows or equivalent statements contained in the Financial Statements (including any related notes and schedules thereto) fairly presents in all material respects the consolidated results of operations and cash flows the Subsidiary for the periods specified in such statement, in accordance with Brazilian GAAP. The Subsidiary maintain a system of internal controls sufficient to provide assurance that transactions involving such Person are properly authorized and accurately recorded to permit the preparation of the Financial Statements.

(c) Schedule 3.06(c) sets forth all indebtedness for which the Company and the Subsidiary are liable (including the maximum available amount under any undrawn credit facility, revolving credit facility or similar Contract for indebtedness).

(d) There are no liabilities of the Company or the Subsidiary that would be required to be reflected on a consolidated balance sheet of the Company or Subsidiary in accordance with U.S. GAAP or Brazilian GAAP, except for liabilities: (a) reflected or reserved for in any of the Financial Statements (with respect to the Subsidiary); or (b) incurred under this Agreement.

Section 3.07. ~~Section 3.06~~ **Brokers.** ~~Neither Seller nor any Affiliate of Seller has paid or become obligated to pay any fee or commission to any broker, finder, investment banker or intermediary for or on account of the transactions contemplated by this Agreement for which Buyer could be liable.~~**Brokers**. There is no fee or commission payable by Seller, Parent, the Company or the Subsidiary to any broker, finder, investment banker or intermediary that has been retained by or is authorized to act on behalf of Seller, Parent, the Company, the Subsidiary or any of their respective Affiliates for or on account of the transactions contemplated by this

[3] NTD: Please provide the financial statements of the Subsidiary.

Agreement for which Buyer, the Company or the Subsidiary could reasonably be expected to be liable.

Section 3.08. Sufficiency of Assets; Property.

(a) The Company and the Subsidiary, taken together, have good and valid title to, or a valid leasehold interest in, all of the personal property tangible assets used or held for use in, and necessary for the operation of, the Business, free and clear of all Encumbrances. Except as set forth in Schedule 3.08(a)(i) hereto, the assets and other properties and interests currently owned, leased or otherwise used by the Company and the Subsidiary constitute all the assets reasonably necessary to conduct the Business and to achieve Commercial Production. There are no assets used in the operation of the Business by the Subsidiary and owned by any Person other than the Subsidiary that are not currently leased or licensed to the Subsidiary under valid, current leases or license arrangements. The assets that are owned or that will be used by the Subsidiary for the operation of the Business are in reasonable operating condition and repair in all material respects, reasonable wear and tear and normal preventative maintenance excepted. Schedule 3.08(a)(ii) contains a list of the assets that were purchased by the Subsidiary but are not yet installed.

(b) The Property is described on Schedule 3.08(b)(i). The Company and the Subsidiary, taken together, have good, legitimate, valid and marketable title and possession of the Property, free and clear of any Encumbrances, compulsory purchase (including expropriation) or threat of compulsory purchase or Encumbrance. Except as set forth on Schedule 3.08(b)(ii), neither Seller, Parent, the Company nor the Subsidiary has received written notice (i) that the occupancy, use and operation of the Property violates in any respect any applicable Law or Licenses or (ii) of any material pending or threatened, appropriation, condemnation, expropriation, eminent domain or like proceedings relating to the Property.

(c) Neither the Company nor the Subsidiary owns any real property. Schedule 3.08(c) sets forth, as of the date hereof, a correct and complete list of all real property that is leased and/or occupied by the Company and the Subsidiary (the "**Leased Real Property**") as of the date hereof. Seller and Parent have made available to Buyer correct and complete copies of each of the leases pursuant to which each of the Company and the Subsidiary leases the Leased Real Property. Except as set forth on Schedule 3.08(c), neither Seller, Parent, the Company nor the Subsidiary has received written notice (i) that the occupancy, use and operation of the Leased Real Property violates in any material respect any applicable Law or Licenses or (ii) of any material pending or threatened, appropriation, condemnation, expropriation, eminent domain or like proceedings relating to the Leased Real Property.

(d) The Facility Site Lease is valid, binding, enforceable and in full force and effect. A true, correct and complete copy of the Facility Site Lease has been delivered to Buyer. Neither the Seller, the Company nor the Subsidiary, and to Seller's knowledge, no other party thereto is in default or breach under the terms of the Facility Site Lease. There are no written or oral subleases, licenses or other contracts granting to any Person other than Subsidiary the right to use or occupy the Tailings Reprocessing Facility Site. No

security deposit or portion thereof deposited with respect to the Facility Site Lease has been applied in respect of a breach or default thereunder which has not been redeposited in full. All work required to be performed under the Facility Site Lease by the landlord thereunder or by Subsidiary has been performed, and to the extent that Subsidiary is responsible for the payment of such work, has been fully paid for. Neither the Seller, the Company nor the Subsidiary has collaterally assigned, mortgaged, deeded in trust or otherwise encumbered the Facility Site Lease or the Tailings Reprocessing Facility Site. Neither Seller, Parent, the Company nor the Subsidiary has received written notice (i) that the occupancy, use and operation of the Tailings Reprocessing Facility Site violates in any material respect any applicable Law or Licenses or (ii) of any material pending or threatened, appropriation, condemnation, expropriation, eminent domain or like proceedings relating to the Tailings Reprocessing Facility Site. The Tailings Reprocessing Facility Site is adequate in all respects (including with respect to Licenses and engineering) for the conduct of the Business. The Tailings Reprocessing Facility Site is served by proper utilities and other building services as necessary for its current use by Subsidiary and all of the buildings and structures located at the Tailings Reprocessing Facility Site are structurally sound with no material defects that are not being addressed in the ordinary course of business and are otherwise in good operating condition.

(e) The Tailings Reprocessing Facility Site is properly zoned for manufacturing use. There is no pending or threatened request, application or proceeding to alter or restrict the zoning or other use restrictions applicable to the Tailings Reprocessing Facility Site which has been commenced or filed by Seller, the Company or Subsidiary. To Seller's knowledge, there is no plan, study or effort by any Governmental Authority or any Person that in any way affects or would affect the current zoning of the Tailings Reprocessing Facility Site.

(f) Except as addressed pursuant to the Memorandum of Understanding, there are no third parties with mining exploitation rights or rights arising from mineral easement over the Tailings Reprocessing Facility Site.

(g) The rights under the Usufruct are sufficient to grant the Subsidiary the right to extract the Mineral Products from the Property and to transfer such Mineral Products from the Property to the Tailings Reprocessing Facility Site so as to permit the Business to be conducted.

Section 3.09. Licenses; Compliance with Laws.

(a) Schedule 3.9(a) lists all current Licenses held by the Company, the Subsidiary and Reginaldo required by the applicable Governmental Authorities in connection with the exploitation of the Property, construction and operation of the Tailings Reprocessing Facility and development of the Business (all Licenses required to be listed on Schedule 3.9(a), the "**Held Licenses**").

(b) Each of the Company and the Subsidiary is currently in, and during the past three (3) years has been in, compliance with applicable Law other than with respect to any non-compliance that would not reasonably be expected to have a material adverse impact on the Company or the Subsidiary. Neither Seller, Parent, the Company nor the

Subsidiary have received written notice of any claims or charges or Governmental Order that are pending against it or, to the Seller's knowledge, threatened against the Company, the Subsidiary or any of their representatives with respect to any violation of any Law or Governmental Order.

Section 3.10. Affiliate Transactions. Except as set forth on Schedule 3.10, (a) neither the Company nor the Subsidiary is a party to or bound by any agreement or arrangement (collectively "**Affiliated Transactions**") with (i) Seller, Parent, or any of their respective Affiliates, (ii) any officer, director, manager, member, stockholder, equityholder or employee of Seller or Parent or any immediate family member of any of the foregoing, or (iii) any officer, director, manager, member or employee of the Company or the Subsidiary ((i), (ii) and (iii), collectively, "**Related Party**"); and (b) no Related Party has (i) any financial obligations to or is owed or owes any financial obligations from or to, any of the Company or the Subsidiary, or (ii) any ownership interest in any property, asset or right of any of the Company or the Subsidiary, or any property or asset used in the Business.

Section 3.11. Tax Matters.

(a) Each of the Company and the Subsidiary timely filed all income and other material Tax Returns that were required to be filed by it with respect to each taxable period ending on or before the Closing Date. All such Tax Returns were prepared in compliance with all applicable Laws and are true, correct and complete in all material respects. There are no Liens for Taxes upon any asset of the Companies (other than Liens for Taxes not yet due and payable). Each of the Company and the Subsidiary has paid all Taxes shown as due and owing on all Tax Returns filed by it on or prior to the Closing Date, and has paid all other income and other material Taxes due and owing, in each case other than Taxes that are not yet due and payable. The unpaid Taxes of the Companies that are not yet due and payable do not exceed the reserve for Tax liability (excluding any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth or included in the financial statements delivered pursuant to Section 5.07, as adjusted for the passage of time through the Closing Date. All material Taxes required to be withheld or collected by or on behalf of the Company or the Subsidiary have been properly withheld, all such Taxes have been duly and timely paid to the proper Governmental Authorities, and no Tax is required under applicable Law to be deducted or withheld from any payment to Seller made pursuant to this Agreement.

(b) Neither the Company nor the Subsidiary has been the subject of any audit or investigation by any Governmental Authority with respect to any taxable periods or portions of periods ending on or before the Closing Date whose statute of limitations has not expired. No waivers of statutes of limitation with respect to the Taxes or Tax Returns of the Company or the Subsidiary are currently in effect. No jurisdiction in which either the Company or the Subsidiary does not file a particular Tax Return has asserted a requirement to file a Tax Return or liability for a Tax against the Company or the Subsidiary, as applicable. Neither the Company nor the Subsidiary has participated in a reportable transaction within the meaning of Treasury Regulations Section 1.6011-4(b) (or any corresponding or similar provision of state, local or non-U.S. Tax Law).

(c) Neither the Company nor the Subsidiary is or was a member of any affiliated group within the meaning of Section 1504(a) of the Code (or any similar group defined under a similar provision of state, local, or foreign Law). Each of the Company and the Subsidiary is, and has been since formation, a disregarded entity for U.S. federal (and applicable state and local) income Tax purposes.[4]

(d) Neither the Company nor the Subsidiary (i) is the subject of a Tax ruling that would have continuing effect after the Closing; (ii) is the subject of a "closing agreement" as described in Section 7121 of the Code (or any similar provision of state, local or foreign Law) with any Governmental Authority that would have continuing effect after the Closing; (iii) has granted a power of attorney with respect to any Tax matters that would have continuing effect after the Closing; (iv) has an application pending for, or to Seller's knowledge, has any Governmental Authority proposed, any adjustment or change in accounting method; or (v) will be required to include any item of income in, or exclude any item of deduction from, taxable income for any Post-Closing Tax Period as a result of (a) any installment sale or open transaction disposition made in any Pre-Closing Tax Period, (b) any prepaid amount received in any Pre-Closing Tax Period, (c) any change in method of accounting for any Pre-Closing Tax Period (including pursuant to Section 481 of the Code), (d) any election made pursuant to Section 965(h) of the Code, (e) any election made pursuant to Section 108(i) of the Code (or any corresponding or similar provision of state, local or non-U.S. Tax Law), or (f) otherwise.

(e) The Company and the Subsidiary have filed or caused to be filed all social security returns required under applicable Law and the Company and the Subsidiary have paid in due time all of their respective social security obligations.

(f) For purposes of this Section 3.11, each of the Company and the Subsidiary shall be deemed to include any Person that was liquidated into or merged with the Company and the Subsidiary, as applicable.

Section 3.12. Contracts. Schedule 3.12 hereto sets forth all Contracts whether written or oral, express or implied, or having any other legally binding basis to the Company or the Subsidiary (all contracts required to be listed on Schedule 3.12, the "**Company Contracts**").[5] Each such Company Contracts is in good standing, valid, binding and in full force and that neither the Company nor the Subsidiary is in breach of any such Company Contracts. No party has delivered written notice of termination (or threatening to terminate) and, to Seller's knowledge, no party has orally threatened to exercise any termination rights with respect to any Company Contracts. To Seller's knowledge, each Contract will continue to be in full force and effect after consummation of this Agreement and the transactions contemplated by this Agreement except where the failure to be in full force and effect would not reasonably be expected to be material to the Company or the Subsidiary. True, correct and complete copies of the Company Contracts, including all amendments, schedules, exhibits and other attachments thereto, have been made available to Buyer prior to the date hereof.

[4] NTD: If this R&W cannot be made, we would expect a covenant to make a check-the-box election effective prior to closing to treat the relevant entity as a disregarded entity.

[5] NTD: This list should include the Key Agreements and any other Contracts entered by the Company or the Subsidiary.

Section 3.13. Employee Matters. None of the Seller, the Company or the Subsidiary have employees or has ever had employees.

Section 3.14. Intellectual Property. Schedule 3.14 contains a complete and correct list of all Intellectual Property owned (solely or jointly) by the Company or the Subsidiary and used in the operation of their business as of the date hereof. The Company and the Subsidiary have valid, unrestricted and unconditioned right to use the Intellectual Property that is material to the development of the Business.

Section 3.15. Litigation. Schedule 3.15 sets forth a list of each pending or, to Seller's knowledge, threatened claim of any nature (civil, criminal, environmental, Tax, regulatory, labor or otherwise), relating to or involving the Company, the Subsidiary, the Business or the Property. Except as disclosed in Schedule 3.15, there are no pending or, to Seller's knowledge, threatened claims of any nature (including civil, criminal, labor, tax, environmental, regulatory or other) involving or affecting the Company, the Subsidiary, any of its respective Representatives, the Business or the Property.

Section 3.16. Environmental and Mining Matters. The Company and the Subsidiary have been in compliance with all environmental and mining Laws in effect in Brazil, and no condition exists or event has occurred which, with or without notice or the passage of time or both, would constitute a violation under any environmental and mining Law and nor, to the Seller's knowledge, are there threatened, or ongoing claims that may result in the termination or forfeiture of Reginaldo's mining rights. Except as disclosed in Schedule 3.16, the Subsidiary is in possession of or covered by all Licenses required by or pursuant to any applicable environmental Law for the development of the Business, which are in full force and effect.

Section 3.17. Anticorruption and Related Laws. Neither the Company, Seller, Parent nor the Subsidiary, nor any Representative or other Person acting on behalf of the Company, Seller, Parent or the Subsidiary or in respect of the Business has violated any provision of the Anticorruption and Related Laws, including without limitation with respect prohibition on the exercise of acts against the public administration, corruption, bribery, fraud, conflict of interest in the public sector, administrative misconduct, misconduct in bidding and public procurement, money laundering. Neither the Company, the Subsidiary, Seller nor Parent, nor any Representative or other Person, when acting on behalf of the Subsidiary or in connection with the Property, have directly or indirectly offered, promised, given or agreed to give money or any other undue advantage, directly or indirectly, to any Governmental Authority or any representative, agent or employee of a Governmental Authority.

Section 3.18. Powers of Attorney. Schedule 3.18 sets forth a complete and correct list of all powers of attorney and proxies granted by the Company or the Subsidiary that are in full force and effect. There are no powers of attorney or proxies of the Company or the Subsidiary in effect other than those listed in such Schedule.

Section 3.19. ~~Section 3.07~~ **No Other Representations and Warranties**. Except for the representations and warranties contained in this ARTICLE III or in any certificate delivered pursuant to this Agreement, none of Seller, Parent, the Company or any other Person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of Seller, Parent or the Company, including any representation or warranty as to the accuracy or

completeness of any information regarding the Company furnished or made available to Buyer and its Representatives (including the Confidential Information Memorandum dated December 2017 and any information, documents or material made available to Buyer in the Data Room, management presentations or in any other form in expectation of the transactions contemplated hereby) or as to the future revenue, profitability or success of the Company, or any representation or warranty arising from statute or otherwise in law.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller and Parent that the statements contained in this ARTICLE IV are true and correct ~~in all material respects~~ as of the Execution Date and as of the Closing Date (except as otherwise expressly set forth).

Section 4.01. ~~Section 4.01~~ **Organization and Authority of Buyer**. ~~Buyer is a [●]~~ Buyer is a limited liability company duly organized and validly existing under the Laws of the state of ~~[●]~~Delaware. Buyer has all necessary power and authority to enter into this Agreement, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery by Buyer of this Agreement, the performance by Buyer of its obligations hereunder and the consummation by Buyer of the transactions contemplated hereby have been duly authorized by all requisite action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer, and (assuming due authorization, execution and delivery by Seller and Parent) this Agreement constitutes a legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity).

Section 4.02. ~~Section 4.02~~ **No Conflicts; Consents**. The execution, delivery and performance by Buyer of this Agreement, and the consummation of the transactions contemplated hereby, do not and will not: (a) result in a violation of any provision of the organizational documents of Buyer; (b) result in a violation of any provision of any Law or Governmental Order applicable to Buyer; or (c) require the consent, notice or other action by any Person.

Section 4.03. ~~Section 4.03~~ **Investment Purpose**. Buyer is acquiring the Membership Interests solely for its own account for investment purposes and not with a view to, or for offer or sale in connection with, any distribution thereof. Buyer acknowledges that the Membership Interests are not registered under the Securities Act of 1933, as amended, or any state securities laws, and that the Membership Interests may not be transferred or sold except pursuant to the registration provisions of the Securities Act of 1933, as amended or pursuant to an applicable exemption therefrom and subject to state securities laws and regulations, as applicable. Buyer is able to bear the economic risk of holding the Membership Interests for an indefinite period (including total loss of its investment), and has sufficient knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risk of its investment.

Section 4.04. ~~Section 4.04~~ **Brokers**. ~~Neither Buyer nor any Affiliate of Buyer has paid or become obligated to pay any~~There is no fee or commission payable by Buyer or an Affiliated

of Buyer to any broker, finder, investment banker or intermediary that has been retained by or is authorized to act on behalf of Buyer or any of its Affiliates for or on account of the transactions contemplated by this Agreement for which Seller or Parent could reasonably be expected to be liable.

Section 4.05. ~~Section 4.05~~ **Sufficiency of Funds**. Buyer has sufficient cash on hand or other sources of immediately available funds to enable it to make payment of the Closing Purchase ~~Price~~Consideration and consummate the transactions contemplated by this Agreement.

Section 4.06. ~~Section 4.06~~ **USA PATRIOT Act**. No Person Affiliated with Buyer or, to ~~its~~Buyer's knowledge, that makes funds available to Buyer or any Affiliate of Buyer in order to allow Buyer to fulfill its obligations under this Agreement or for the purpose of funding any purchase price hereunder is: (i) a Person listed in the annex to Executive Order No. 13224 (2001) issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or a Person with whom a citizen of the United States is otherwise prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States; (ii) named on the List of Specially Designated Nationals and Blocked Persons maintained by the U.S. Office of Foreign Assets Control or on any other similar list maintained by the U.S. Treasury Department, Office of Foreign Assets Control pursuant to any Law, including, without limitation, trade embargo, economic sanctions, or other prohibitions imposed by Executive Order of the President of the United States; (iii) a non-U.S. shell bank or is providing banking services indirectly to a non-U.S. shell bank; (iv) a senior non-U.S. political figure or an immediate family member or close associate of such figure; or (v) otherwise prohibited from investing in Seller or Parent pursuant to applicable anti-money laundering, anti-terrorist and asset control Laws, regulations, rules or orders of any relevant jurisdiction.

Section 4.07. ~~Section 4.07~~ **Independent Investigation**. Buyer has conducted its own independent investigation, review and analysis of the Membership Interests and the business, results of operations, prospects, condition (financial or otherwise) or assets of the Company~~, and acknowledges that it has been provided adequate access to the personnel, properties, assets, premises, books and records, and other documents and data of Seller and the Company for such purpose~~. Buyer acknowledges and agrees that~~: (a) in making its decision to enter into this Agreement and to consummate the transactions contemplated hereby, Buyer has relied solely upon its own investigation and the express representations and warranties of Seller set forth in ARTICLE III of this Agreement; and (b)~~ none of Seller, Parent, the Company or any other Person has made any representation or warranty as to Seller, Parent, the Company or this Agreement, except as expressly set forth in ARTICLE III of this Agreement or in any certificates delivered pursuant to this Agreement.

ARTICLE V
COVENANTS

Section 5.01. **Conduct of Business Prior to the Closing.**

(a) ~~Section 5.01 **Conduct of Business Prior to the Closing.**~~ From the Execution Date until the Closing, except as otherwise provided in this Agreement or

consented to in writing by Buyer (which consent shall not be unreasonably withheld or delayed), Seller shall, and shall cause the Company and the Subsidiary to: (~~a~~i) conduct the business of the Company and of the Subsidiary in the ordinary course of business; ~~and~~ (~~b~~ii) use commercially reasonable efforts to maintain and preserve intact the current assets, properties, organization, business and franchise of the Company and the ~~Subsidiaries~~Subsidiary, and (iii) use commercially reasonable efforts to timely obtain and renew the Licenses required for the conduct of the Business. From the Execution Date until the Closing Date, except as consented to in writing by Buyer (which consent shall not be unreasonably withheld or delayed), Seller shall not cause or permit the Company or the Subsidiary to take any action or omit to take any action that ~~would have a material adverse effect on the Company or its assets~~could reasonably be expected to have a Material Adverse Effect.

(b) Without limiting the generality of the foregoing and without regard to whether to do so could reasonably be expected to have a Material Adverse Effect on the Company, the Subsidiary or the Business, from the Execution Date until the Closing, Seller shall not and shall cause the Company and the Subsidiary not to: (i) amend any of its Governing Documents; (ii) acquire (by merger or stock or asset purchase or otherwise) any corporation, partnership, other business organization or any material business or division thereof; (iii) issue, sell or otherwise transfer or Encumber any Equity Interests in the Company or in the Subsidiary or split, combine, redeem or reclassify, or purchase or otherwise acquire, any Equity Interests of any Person; (iv) declare or pay any dividends (whether in cash or in kind), issue, purchase or redeem any Equity Interests, or make any other distributions to its shareholders; (v) incur, assume or guaranty any indebtedness, or make any loans, advances or capital contributions to, or investment in, any other Person; (vi) cancel any debts or claims or amendment, termination or waiver of any rights constituting material assets; (vii) mortgage, pledge or otherwise encumber any of its properties, assets or rights, or sell, transfer, or otherwise dispose of any of its properties, assets or rights; (viii) waive any right, forgive any debt, or release any claim; (ix) amend, modify or terminate any Company Contracts; (x) hire any employees or pay any bonuses or extraordinary compensation to any directors, officers or other service providers; (xi) permit that any Person other than the Persons listed on Schedule 5.01(b) herein or as otherwise authorized by Buyer enter or otherwise access the Property or the Tailings Reprocessing Facility Site; (xii) enter into any leases, licenses, contracts, purchase orders or other Contracts committing to expend more than $**[●]** in any one or a series of related transactions; (xiii) enter into or perform any transactions with any Affiliate; (xiv) implement or adopt any material change in its accounting principles, practices or methods, other than as may be required by Law or applicable accounting requirements; and (xv) enter into any Contract with respect to, or otherwise agree or commit to, or permit any of the foregoing.

Section 5.02. ~~Section 5.02~~ **Access to Information**. From the Execution Date until the Closing, Seller and Parent shall, and shall cause the Company and the Subsidiary to: (a) afford Buyer and its Representatives reasonable access to and the right to inspect all of the properties, assets, premises, books and records, contracts, agreements and other documents and data related to the Company and the Subsidiary (including, for avoidance of doubt, access to the Property and the Tailings Reprocessing Facility); (b) furnish Buyer and its Representatives with such financial, operating and other data and information related to the Company and to the Subsidiary as Buyer

or any of its Representatives may reasonably request; and (c) instruct the Representatives of Seller, Parent, the Company and the ~~Company~~Subsidiary to cooperate with Buyer in the foregoing; provided, however, that any such activities shall be conducted during normal business hours upon reasonable advance notice to Seller~~,~~ under the supervision of Seller's personnel ~~and in such a manner as not to interfere with the normal operations of the Company~~. Notwithstanding anything to the contrary in this Agreement, ~~neither~~none of Seller ~~nor~~, Parent or the Company shall be required to disclose any information to Buyer if such disclosure would, in Seller's sole discretion: (x) jeopardize any attorney-client or other privilege; or (y) contravene any applicable Law, fiduciary duty or binding agreement entered into prior to the Execution Date.

~~Section 5.03 **Resignations.** Seller shall deliver to Buyer written resignations, effective as of the Closing Date, of the officers and directors of the Company and the Subsidiaries at least two (2) Business Days prior to the Closing.~~

Section 5.03. Efforts to Consummate; Approval Order.

(a) As promptly as practicable after the date hereof (but in any event within five (5) Business Days following the date hereof), Receiver, Seller and Parent shall use their reasonable best efforts to make and shall cause their Affiliates to use reasonable best efforts to make all filings, notices, petitions, statements, registrations, submissions of information, application or submission of other documents required of such party by any Governmental Authority in connection with the transactions contemplated by this Agreement, including: (i) the filings necessary for the obtainment of the Approval Order, (ii) the consents, notices and filings listed on Schedule 3.05, and (iii) any consents, notices and filings required under the applicable Laws or rules and regulations of any Governmental Authority relating to, and material to the consummation of, the transactions contemplated hereby.

(b) Subject to applicable Law and except as prohibited by any Governmental Authority, Receiver, Seller and Parent shall, and shall cause their respective Affiliates (including the Company and the Subsidiary) to, keep Buyer apprised of the status of matters relating to consummation of the transactions contemplated hereby, including (i) promptly notifying Buyer of any facts, circumstances or other reason that would prevent the receipt of the Approval Order or any other consents, waivers, authorizations and approvals of any third parties or Governmental Authorities required in connection with the consummation of the transactions contemplated by this Agreement and the other Transaction Documents or the timely consummation of transactions contemplated by this Agreement and the Transaction Documents, and (ii) promptly furnishing Buyer with copies of material notices or other communications received by Receiver, Seller, Parent, the Company or the Subsidiary from any third party or any Governmental Authority with respect to the transactions contemplated by this Agreement and the Transaction Documents; provided that any such notices furnished hereunder may be redacted to the extent necessary, either to comply with applicable Law or to protect the confidentiality or privilege of information.

(c) Each of Receiver, Parent and Buyer shall, upon request by the other and subject to appropriate confidentiality and privilege restrictions, furnish the other with all material documentation concerning Receiver, Seller, Parent, the Company, the

Subsidiary, or Buyer and such other matters as may be necessary or reasonably advisable in connection with any notices, reports, statements, applications or other filings made by or on behalf of Buyer, Receiver, Parent, Seller, the Company and the Subsidiary or any of their respective Affiliates to any Governmental Authority in connection with the transactions contemplated by this Agreement and the Transaction Documents; provided that any such documentation furnished by the parties to one another may be redacted to the extent necessary, either to comply with applicable Law or to protect the confidentiality or privilege of information.

(d) Subject to applicable Law and except as required by any Governmental Authority, neither Buyer, Receiver, Parent or Seller shall (and Seller shall cause the Company and the Subsidiary not to) (i) enter into any agreement with any Governmental Authority not to consummate the transactions contemplated by this Agreement or any Transaction Document without the prior written consent of Buyer, Seller and Parent (such consent not to be unreasonably withheld, conditioned of delayed) or (ii) take any other take any action that would be reasonably likely to prevent or materially delay the receipt of the Approval Order, in each case, to the extent necessary for the timely consummation of the transactions contemplated by this Agreement and the Transaction Documents.

Section 5.04. Confidentiality.

(a) ~~Section 5.04 **Confidentiality.** Buyer acknowledges and agrees that the Confidentiality Agreement remains in full force and effect and, in addition, covenants and agrees to keep confidential, in accordance with the provisions of the Confidentiality Agreement, information provided to Buyer pursuant to this Agreement. If this Agreement is, for any reason, terminated prior to the Closing, the Confidentiality Agreement and the provisions of this Section 5.04 shall nonetheless continue in full force and effect.~~ From and after the date of this Agreement, Receiver, Parent and Seller will maintain in confidence, and will cause their managers, officers, employees, agents, and advisors (and, until Closing, the Company and the Subsidiary) to maintain in confidence, any Proprietary Information furnished by or related to Buyer, the Company and the Subsidiary whether in connection with this Agreement or the transactions contemplated herein or otherwise. The restriction contained in the preceding sentence shall not apply to any Proprietary Information to the extent that (a) such information is or hereafter becomes generally available to the public without a breach of this Agreement, (b) disclosure is made solely to a Governmental Authority where it is necessary, on the advice of counsel, to disclose such information to such Governmental Authority having jurisdiction over the parties or (c) disclosure is otherwise required by Law. The Confidentiality Agreement shall remain in full force and effect from the date of this Agreement until the Closing Date. The Confidentiality Agreement shall be terminated and of no further force or effect without any further act from any party from and after the Closing.

(b) If the transactions contemplated herein are not consummated, (i) Receiver, Parent and Seller will return or destroy as much of such written information as Buyer may reasonably request; and (ii) Receiver, Parent and Seller shall treat the Proprietary Information as confidential, and the confidentiality obligations of the Confidentiality Agreement shall apply to Receiver, Parent and Seller and with respect to such information, *mutatis mutandi*.

Section 5.05. ~~Section 5.05~~ **Closing Conditions**. From the Execution Date until the Closing, each party hereto shall, and Receiver, Seller and Parent shall cause the Company and the Subsidiary to, use commercially reasonable efforts to take such actions as are necessary or desirable to expeditiously satisfy the closing conditions set forth in ARTICLE VI hereof.

Section 5.06. ~~Section 5.06~~ **Further Assurances**. From and after the Execution Date and through and including the ~~ninetieth (90th) calendar day~~date that is five (5) years following the Closing Date, each of the Parties shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances, and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement.

Section 5.07. Reports~~Section 5.07 **Royalty Consideration.** With respect to each calendar quarter after the commencement of Commercial Production, Buyer (including its successors and assigns, Owner and any Transferee Owner) covenants to cause to be calculated in good faith the Royalty Consideration payable with respect to such calendar quarter, and to cause to be promptly remitted to Seller (no later than thirty (30) days after the end of such calendar quarter), the amount of Royalty Consideration calculated to be payable, together with Buyer's detailed calculation thereof. The covenant of this Section 5.07 shall survive the Closing for so long as Owner (or any Transferee Owner) shall continue to have any mining or mineral rights with respect to the Property.~~. Buyer shall furnish Seller (or cause Owner to furnish Seller), within thirty (30) days after the end of each fiscal quarter of Owner commencing with the end of the fiscal quarter beginning on the Closing Date and continuing during the Royalty Period, information regarding the amount of gold extracted from the Property by Buyer or Owner supporting the calculation of the Royalty Consideration due in the applicable quarter or the Gold Extraction Hurdle, duly certified by an officer of JDS Energy & Mining Inc. or any of its Affiliates. The covenant of this Section 5.07 shall survive the Closing until the date that is six (6) months following the end of the Royalty Period.

~~Section 5.08 **Financial Reports; Audit Right.**~~

~~(a) Buyer shall furnish Seller (or cause Owner to furnish Seller) within ninety (90) days after the end of each calendar year, financial statements of Owner on a consolidated basis including, but not limited to, statements of income and shareholders' equity and cash flow of Owner from the beginning of such year to the end of such year and the balance sheet as at the end of such year, all prepared in accordance with GAAP applied on a basis consistent with prior practices (except as disclosed therein and agreed to by such reporting accountants or officer, as applicable), and in reasonable detail and reported upon without qualification as to scope by an independent certified public accounting firm selected by Owner and reasonably satisfactory to Seller (the "Accountants").~~

~~(b) Buyer shall furnish Seller (or cause Owner to furnish Seller) within thirty (30) days after the end of each of the first three (3) calendar quarters of the year, an unaudited balance sheet of Owner on a consolidated basis and unaudited statements of income and shareholders' equity and cash flow of Owner on a consolidated basis reflecting results of operations from the beginning to the end of such quarter and for such quarter, prepared on a basis consistent with prior practices and complete and correct in all~~

~~material respects, subject to normal and recurring year-end adjustments that individually and in the aggregate are not material to Owner's business operations, and reviewed by the Accountants.~~

~~(c) Seller and/or Seller's agents shall have the right, during regular business hours upon reasonable notice, and no more frequently than once per calendar year, to have access to and inspect the books, records, audits, correspondence and other papers relating to the business of the Owner, and make abstracts and copies therefrom, for purposes of verifying the calculation of Royalty Consideration. Seller and/or Seller's agents shall have the right, during regular business hours upon reasonable notice, to enter upon any premises of the Owner for the purpose of inspecting the Property and any and all records pertaining thereto and the operation of Owner's business.~~

~~(d) The covenant of this Section 5.08 shall survive the Closing for so long as Owner (or any Transferee Owner) shall continue to have any mining or mineral rights with respect to the Property.~~

Section 5.08. ~~Section 5.09~~ **Assignments and Transfers**. Owner shall not grant, transfer or convey the whole or any portion of its right, title and interest in and to the Property or the Company to a ~~third party ("**Transferee Owner**"), unless Transferee Owner enters into a written agreement with Seller and Owner in advance of such transfer, reasonably acceptable to Seller and Owner, wherein Transferee Owner~~Person who is not an Affiliate or equity holder of Owner, unless such Person ("**Transferee Owner**") expressly agrees to assume all of the obligations of Owner under this Agreement with respect to the Royalty Consideration (including, without limitation, Seller's and Owner's obligations under ~~Sections 2.06,~~Section 2.06, and Section 5.07~~ and 5.08) and Owner shall cause a duly executed counterpart thereof to be delivered to Seller~~). Upon and following any such transfer to a Transferee Owner, all references in this Agreement to "Owner" shall be deemed to include such Transferee Owner.

Section 5.09. Tax Matters.

(a) Seller and Buyer agree that for U.S. federal income (and applicable state and local) Tax purposes the purchase of the Company will be deemed to constitute (and will be treated by the parties as) a sale and purchase of the assets owned and held by the Company and the Subsidiary, unless otherwise required by applicable Law. The Closing Purchase Consideration and any other amounts constituting consideration will be allocated among the assets owned and held by the Company or the Subsidiary in accordance with their fair market values and Section 1060 of the Code. Within one hundred twenty (120) days following the Closing Date, Buyer shall deliver a draft purchase price allocation (the "**Draft Allocation**") to Seller. Seller shall deliver to Buyer any comments within thirty (30) days of receipt of the Draft Allocation and Buyer shall review such comments in good faith. Buyer shall deliver to Seller, within thirty (30) days of Buyer's receipts of Seller's comments, the "**Final Allocation**". The Final Allocation will be revised to reflect any adjustment to the Closing Purchase Consideration under this Agreement. Each Party will report the transactions contemplated by this Agreement on all Tax Returns in accordance with the Final Allocation, as revised, unless otherwise required by applicable Law. Buyer and Seller agree to notify each other with respect to

the initiation of any audit, examination or other proceeding by any Governmental Authority relating to the Final Allocation.

(b) For purposes of allocating Tax liability with respect to a tax period that begins before the Closing Date and ends after the Closing Date, the amount that is allocable to the portion of the period that is a Pre-Closing Tax Period shall be deemed to equal: (x) in the case of Taxes based upon or related to income or receipts (including inclusions under Section 951 of the Code), the amount that would be payable if the taxable period had ended on the Closing Date and the books of the Company or the Subsidiary, as applicable, were closed as of the close of such date; (y) in the case of Taxes imposed on specific transactions or events, Taxes imposed on specific transactions or events occurring on or before the Closing Date; and (z) in the case of Taxes imposed on a periodic basis, or in the case of any other Taxes not covered by clause (x) or clause (y), the amount of such Taxes for the entire Straddle Period multiplied by a fraction (1) the numerator of which is the number of calendar days in such taxable period on or before the Closing Date and (2) the denominator of which is the number of calendar days in the entire taxable period.

(c) Buyer and Seller shall cooperate fully in good faith, as and to the extent reasonably requested by any other party, in connection with the preparation and filing of any Tax Return or claim for refund and any Tax audit, examination or other proceeding (including Tax Contests) with respect to Taxes or Tax Returns of the Company and the Subsidiary.

(d) Seller shall deliver to Buyer a statement, signed under penalties of perjury and dated no more than thirty (30) days prior to the Closing Date, that satisfies the requirements of Treasury Regulations Section 1.1445-2(b)(2) and confirms that such Seller is not a "foreign person" as defined in Section 1445 of the Code.

(e) ~~Section 5.10 **Transfer Taxes.**~~ All transfer, documentary, sales, use, stamp, registration, value added~~ and other such taxes and fees (including any penalties and interest)~~, real property transfer and other similar Taxes incurred in connection with this Agreement ~~(including any real property transfer tax and any other similar tax)~~ shall be borne and paid 50% by Buyer and 50% by Seller when due. Buyer shall~~, at its own expense,~~ prepare and timely file any ~~tax return or other document~~Tax Return required to be filed with respect to such ~~taxes or fees~~Taxes (and Seller shall cooperate with respect thereto as necessary). Any costs associated with preparing and filing such Tax Returns shall be borne 50% by Buyer and 50% by Seller. For the avoidance of doubt, any withholding Taxes, and any Taxes of Seller imposed on or measured by income (however denominated), franchise Taxes, branch profits Taxes, or similar Taxes or other Taxes imposed on Seller as a result of Seller being organized under the laws of, or having its principal office in, the jurisdiction imposing such Tax, incurred in connection with Agreement shall be borne exclusively by Seller.

Section 5.10. Exclusivity; Superior Proposal.

(a) Exclusivity. As of the date hereof until the Closing or, if earlier, the termination of this Agreement in accordance with its terms, Receiver, Parent and Seller

will not, and will cause the Company, the Subsidiary and their respective equityholders, receiver, managers, officers, directors, representatives or agents (the "**Seller Parties**") not to, directly or indirectly: (i) solicit, initiate, propose or induce the making, submission or announcement of, or knowingly encourage, facilitate or assist, any proposal or inquiry that constitutes, or is reasonably expected to lead to, or result in, an Acquisition Proposal, (ii) enter into, participate, engage and maintain discussions or negotiations with any Person with respect to Acquisition Proposals or any other purchase or sale of the assets or capital stock of the Company or the Subsidiary that would otherwise be prohibited under the Section 5.01, or any other proposals that could reasonably be expected to lead to an Acquisition Proposal, or otherwise cooperate with or assist or participate in, or facilitate, any such requests, proposals, discussions or negotiations, or (iii) resolve or agree to do any of the foregoing. As of the date hereof until the Closing or, if earlier, the termination of this Agreement in accordance with its terms, Receiver, Seller and Parent shall (and shall cause the Seller Parties to), (A) cease, and cause to be terminated all existing, discussions or negotiations with any Person conducted heretofore with respect to any Acquisition Proposal or any inquiry or proposal that would reasonably be expected to lead to, or result in, an Acquisition Proposal or to any other purchase, sale or exploitation of the assets or capital stock of the Company or the Subsidiary that would otherwise be prohibited under Section 5.01, and (B) terminate access by any Person to any physical or electronic data room in connection with or relating to any potential Acquisition Transaction. Receiver, Seller and Parent shall promptly (but in any event within one (1) Business Day) advise Buyer of any Acquisition Proposal received or otherwise considered by a Seller Party, the material terms and conditions of any such Acquisition Proposal (including any material changes thereto) and the identity of the Person making any such Acquisition Proposal (the "**Competing Bidder**").

(b) Superior Proposal. Notwithstanding the restrictions set forth in Section 5.10(a), in the event that a Seller Party receives or is made aware of, after the date of this Agreement and prior to obtaining the Approval Order, an Acquisition Proposal and that the Receiver determines in good faith (after consultation with outside counsel and a financial advisor of nationally recognized reputation) to be, or to be reasonably expected to lead to, a Superior Proposal, Receiver, Seller and Parent may engage in negotiations with, furnish any information with respect to the Company and the Subsidiary to, and afford access to the business, properties, assets, books or records of Company and the Subsidiary to, the Competing Bidder (and their respective representatives) making such Acquisition Proposal; provided that Receiver, Seller and Parent shall (i) prior to furnishing any such information, receive from such Competing Bidder an executed confidentiality agreement containing terms and restrictions that are customary for confidentiality agreements executed in similar circumstances, and (ii) furnish all such information and afford all such access to Buyer (to the extent not previously provided or made available) substantially concurrently with it being provided or made available to the Competing Bidder.

(c) Right of Termination. At any time prior to the Closing, in response to a written Acquisition Proposal made by a Competing Bidder that did not result from a material breach of any terms of this Agreement, Seller may terminate this Agreement pursuant to Section 8.01(c)(iii) to enter into an alternative transaction agreement with

respect to a Superior Proposal, subject to the compliance with the terms of Section 5.10(d) and subject to the terms of Section 8.03.

(d) Matching Rights. Seller shall not terminate this Agreement pursuant to Section 8.01(c)(iii) unless:

(i) Receiver, Seller or Parent has first provided to Buyer ten (10) Business Days' prior written notice (the "**Notice Period**"), setting forth (A) that it has received a Superior Proposal, (B) the material terms and conditions of the Superior Proposal (including the identity of the Competing Bidder making the Superior Proposal), and include a copy of the relevant material proposed transaction agreements with such Competing Bidder and other material documents, and (C) that it intends to terminate the Agreement pursuant to Section 8.01(c)(iii); and

(ii) during the Notice Period, to the extent requested by Buyer, Receiver, Seller or Parent shall have engaged in good faith negotiations with Buyer to amend this Agreement and considered in good faith any bona fide offer by Buyer and, after such negotiations and good faith consideration of such offer, if any, the Receiver again makes the determination that the Acquisition Proposal of the Competing Bidder is a Superior Proposal.

Section 5.11. Data Room. Seller shall provide to Buyer a hard disk copy of the Data Room no later than three (3) Business Days following the Closing Date.

Section 5.12. Non-Solicitation.

(a) During the Restricted Period, Seller and Parent shall not, and shall not permit any of their Affiliates and Representatives to, directly or indirectly, hire or solicit Mr. Elliot Bertram (or any person hired to succeed Mr. Elliot Bertram), or encourage Mr. Elliot Bertram (or any person hired to succeed Mr. Elliot Bertram), JDS Energy & Mining Inc. or any of their Affiliates, agents or consultants to leave such employment or engagement with Buyer, the Company or the Subsidiary, or hire Mr. Elliot Bertram (or any person hired to succeed Mr. Elliot Bertram) who has left such employment; provided that nothing in this Section 5.12 shall prevent Seller, Parent and their respective Representatives or any of their Affiliates from hiring (x) Mr. Elliot Bertram (or any person hired to succeed Mr. Elliot Bertram) in the event his (or her) employment has been terminated by Buyer, the Company or the Subsidiary without cause; or (y) after 180 calendar days from the date of termination of employment, Mr. Elliot Bertram (or any person hired to succeed Mr. Elliot Bertram) in the event his (her) employment has been terminated by the employee.

(b) During the Restricted Period, Seller and Parent shall not, and shall not permit any of their Affiliates to, directly or indirectly, solicit or entice, or attempt to solicit or entice, any clients or customers of Buyer, the Company or its Subsidiaries or potential clients or customers of Buyer, the Company or its Subsidiary, in each case for purposes of diverting business or services from Buyer, the Company or the Subsidiary.

Section 5.13. Non-disparagement. From the date of this Agreement until the end of the Restricted Period, Receiver, Seller and Parent will refrain from, and will cause their Affiliates and Representatives to refrain from, in any manner, directly or indirectly, all conduct, oral or otherwise, that disparages or damages or would reasonably be expected to disparage or damage the reputation, goodwill, or standing in the community of Buyer, the Company, the Subsidiary or the Business.

Section 5.14. Notification of Changes. Seller or Parent will promptly advise Buyer in writing of any event occurring subsequent to the date of this Agreement but before the Closing Date that (i) would render any representation or warranty of Seller and Parent contained in ARTICLE III of this Agreement, if made on or as of the date of such event or the Closing Date, untrue or inaccurate in any material respect, (ii) would be required to be disclose in the Disclosure Schedules, (iii) would represent or be reasonably be expected to represent a Material Adverse Effect, or (iv) could have a material negative impact on the Key Agreements. In addition, Seller and Parent shall promptly provide to Buyer copies of any notice by any Governmental Authority with respect to Licenses related to the Property, the Intended Business or to any material non-compliance with applicable Law with the respect to the Subsidiary or the Business.

Section 5.15. Release. Effective at the Closing, Seller and Parent, on behalf of themselves, their Affiliates, and their successors and assigns (collectively, the "**Releasing Parties**"), hereby absolutely, unconditionally and irrevocably releases and discharges, fully, finally and forever, Buyer, the Company, the Subsidiary and their respective Affiliates, agents, representatives, directors, managers, officers and employees (together, the "**Released Parties**") from any and all claims, demands, rights, causes of action, proceedings, orders, remedies, obligations, damages and liabilities of whatsoever kind or character arising as a result of any event or condition, or action or inaction of the Released Parties, from the beginning of time until the Closing, whether known or unknown, absolute or contingent, both at Law and in equity, which such Releasing Party ever had, now has, or ever may have, against any Released Party relating to or in connection with the Company, the Subsidiary or the Business, including in any Releasing Party's capacity as a member, direct or indirect holder of equity Interests of the Company or the Subsidiary prior to the Closing and pursuant to any Contract between any Releasing Party and a Released Party (as to each Releasing Party, such Releasing Party's "**Released Claims**"); provided, however, that Released Claims shall not include, and Releasing Party specifically reserves all of rights related to, any claims pursuant to this Agreement. Effective as of the Closing, each Releasing Party agrees not to file or permit to be filed, any legal proceeding against any Released Party with any Governmental Authority or otherwise, based on events occurring on or prior to the Closing Date in relation to any matter released or purported to be released hereunder. No Releasing Party has assigned, and each hereby covenants not to assign, any Released Claim. Each Releasing Party is aware that statutes exist that render null and void or otherwise affect or may affect releases and discharges of any claims, rights, demands, liabilities, actions and causes of action that are unknown to the releasing or discharging party at the time of execution of the release and discharge. Each Releasing Party, for itself and its other Releasing Parties, hereby expressly waives, surrenders and agrees to forego any and all protections, rights or benefits to which such Releasing Party otherwise would be entitled by virtue of the existence of any such statute or the common law of any state, province or jurisdiction with the same or similar effect. Further, it is understood and agreed that the facts in respect of which this release is given may turn out to be other than or different from the facts in

that respect now known or believed by any Releasing Party to be true; and with such understanding and agreement, each Releasing Party expressly accepts and assumes the risk of facts being other than or different from the assumptions and perceptions as of any date prior to and including the Closing Date, and agrees that this release shall be in all respects effective and shall not be subject to termination or rescission by reason of any such difference in facts.

ARTICLE VI
CONDITIONS TO CLOSING

Section 6.01. ~~Section 6.01~~ **Conditions to Obligations of All Parties**. The obligations of each Party to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of each of the following conditions:

(a) The Court shall have issued the Approval Order and the Approval Order shall be unnapealable.

(b) No Governmental Authority shall have enacted, issued, promulgated, enforced or entered, or have threatened to enact, issue, promulgate, enforce or enter, any Governmental Order which ~~is in effect and~~ has or may reasonably have the effect of making the transactions contemplated by this Agreement illegal or prohibiting consummation of such transactions.

Section 6.02. ~~Section 6.02~~ **Conditions to Obligations of Buyer**. The obligations of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Buyer's waiver, at or prior to the Closing, of each of the following conditions:

(a) The representations and warranties of Seller and Parent contained in ARTICLE III (disregarding all qualifications and exceptions contained therein relating to materiality or Material Adverse Effect), other than the Fundamental Representations, shall be true and correct in all material respects as of the date hereof and as of the Closing Date with the same effect as though made at and as of ~~such date~~the Closing Date (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all material respects as of that specified date). Each of the Fundamental Representations of Seller and Parent contained in ARTICLE III shall be true and correct in all respects as of the date hereof and as of the Closing Date with the same effect as though made at and as of the Closing Date (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all respects as of that specified date).

(b) Seller and Parent shall have performed and complied in all material respects with its covenants in this Agreement to be performed or complied with by it, by the Company or by the Subsidiary on or prior to the Closing Date.

(c) ~~(b)~~ Buyer shall have received a certificate, dated the Closing Date and signed by the Receiver, that the conditions set forth in Section 6.01(a) and (h), and Section 6.02(a), (b), (d) and (e) have been satisfied.

(d) No Material Adverse Effect shall have occurred.

(e) The Key Agreements shall be in full force and effect, and the parties thereto shall not be in material breach or default thereunder.

(f) The New JDS Agreement shall be in full force (except for certain provisions that shall become effective upon Closing, pursuant to the terms therein) and JDS Energy & Mining Inc. and its Affiliates shall not be in material breach or default thereunder.

(g) The Elliot Employment Agreement shall be in full force (except for certain provisions that shall become effective upon Closing, pursuant to the terms therein) and Mr. Elliot Bertram (i) shall not be in material breach or default thereunder and (ii) shall be capable of fulfilling his obligations thereunder.

(h) (i) The Held Licenses shall be in full force and effect; and (ii) none of Seller, Parent, the Company, the Subsidiary or (to the Seller's knowledge) Reginaldo, or their Representatives, shall have received written notice from any Governmental Authority revoking or threatening to revoke any such Held License, alleging that such Person is in material violation of any such Held License, or informing its intention to cancel, terminate, restrict, limit or otherwise qualify or not renew any such Held License.

(i) ~~(c)~~ Seller shall have delivered, or caused to be delivered, to Buyer certificates evidencing the Membership Interests, free and clear of Encumbrances, duly endorsed in blank or accompanied by stock powers or other instruments of transfer duly executed in blank, and any other documents to be delivered pursuant to Section 2.04(c).

Section 6.03. ~~Section 6.03~~ **Conditions to Obligations of Seller and Parent**. The obligations of Seller and Parent to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, or Seller or Parent's waiver, at or prior to the Closing, of each of the following conditions:

(a) The representations and warranties of Buyer contained in ARTICLE IV (disregarding all qualifications and exceptions contained therein relating to materiality or Material Adverse Effect), other than the Fundamental Representations, shall be true and correct in all material respects as of the date hereof and as of the Closing Date with the same effect as though made at and as of ~~such date~~the Closing Date (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all material respects as of that specified date). Each of the Fundamental Representations of Buyer contained in ARTICLE IV shall be true and correct in all respects as of the date hereof and as of the Closing Date with the same effect as though made at and as of the Closing Date (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all respects as of that specified date).

(b) Buyer shall have ~~delivered (or, in the case of the Deposit, shall cause to be delivered) to Seller cash in an amount equal to the Closing Purchase Consideration by wire transfer in immediately available funds, to an account or accounts designated at least two (2) Business Days~~performed and complied in all material respects with its covenants

in this Agreement to be performed or complied with by it on or prior to the Closing Date ~~by Seller in a written notice to Buyer~~.

(c) Buyer shall have delivered, or caused to be delivered, to Seller any documents to be delivered pursuant to Section 2.04(b).

ARTICLE VII
INDEMNIFICATION

Section 7.01. ~~Section 7.01~~ **Survival**. Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein shall survive the Closing and shall remain in full force and effect ~~until the date that is six (6) months from the Closing Date. None of the covenants or other agreements~~ from the date hereof through and including April 30, 2020; provided that (i) the Fundamental Representations shall survive indefinitely, and (ii) the representations and warranties contained in Section 3.11 shall survive the Closing and remain in full force and effect until the date that is sixty (60) days after the expiration of the applicable statute of limitations. Any covenants or obligations of the Parties contained in this Agreement that by their terms are to be performed at or prior to Closing shall not survive ~~the~~ Closing ~~Date other than Buyer's~~. Any covenants or obligations ~~with respect to payment of Royalty Consideration and those other covenants which by their terms contemplate performance after the Closing Date, and each~~ of the Parties contained in this Agreement which by their terms are to be performed after Closing shall survive the Closing in accordance with their respective terms until performed. Any claim with respect to the Pre-Closing Liabilities and Pre-Closing Taxes shall survive the Closing and remain in full force and effect until the date that is sixty (60) days from the expiration of the applicable statute of limitations. If at any time prior to the end of the applicable survival period any claim for indemnification is asserted in accordance with the terms of this ARTICLE VII, such ~~surviving covenant and agreement shall survive the Closing for the period contemplated by its terms.~~ claim shall survive beyond the applicable survival period until fully and finally resolved by agreement among the parties or by a final and non-appealable decision of a court of competent jurisdiction. The Parties specifically and unambiguously intend that the survival periods that are set forth in this Section 7.01 replace any statute of limitations that would otherwise be applicable.

Section 7.02. ~~Section 7.02~~ **Indemnification ~~By~~by Seller and Parent**. Subject to the other terms and conditions of this ARTICLE VII, Seller ~~shall indemnify Buyer~~ and Parent, joint and severally, shall indemnify Buyer, the Owner, their respective Affiliates, and their respective officers, directors, shareholders, members, employees, successors and permitted assigns (each, a "**Buyer Indemnified Party**") against, and shall hold each Buyer Indemnified Party harmless from and against, any and all Losses incurred or sustained by, or imposed upon, any Buyer Indemnified Party, based upon, arising out of, with respect to or by reason of:

(a) any fraud or intentional misrepresentation committed by Seller, Parent, the Company or Subsidiary;

(b) any ~~material~~ breach of any of the representations or warranties of Seller or Parent contained in this Agreement~~;~~ or in a certificate provided pursuant to this Agreement;

(c) any ~~material~~ breach of any covenant, agreement or obligation to be performed by Seller or Parent pursuant to this Agreement~~.~~;

(d) Pre-Closing Taxes;

(e) any liability or obligation of Seller or any Affiliate other than with respect to any liabilities expressly assumed by the Company and specifically disclosed in Disclosure Schedules; or

(f) any liabilities arising out of or related to any acts or omissions that occurred prior to the Closing, other than with respect to any liabilities of the Company or Subsidiary to the extent specifically disclosed in Disclosure Schedules (collectively, the "**Pre-Closing Liabilities**").

Section 7.03. ~~Section 7.03~~ **Indemnification By Buyer**. Subject to the other terms and conditions of this ARTICLE VII, Buyer shall indemnify Seller, Parent and its Affiliates and their respective officers, directors, shareholders, members, employees, successors and permitted assigns (each, a "**Seller Indemnified Party**") against, and shall hold Seller Indemnified Party harmless from and against, any and all Losses incurred or sustained by, or imposed upon, Seller Indemnified Party based upon, arising out of, with respect to or by reason of:

(a) any fraud or intentional misrepresentation committed by Buyer;

(b) any ~~material~~ breach of any of the representations or warranties of Buyer contained in this Agreement or in a certificate provided pursuant to this Agreement; or

(c) any ~~material~~ breach of any covenant, agreement or obligation to be performed by Buyer pursuant to this Agreement (including the failure of Buyer to timely remit to Seller the Royalty Consideration).

Section 7.04. ~~Section 7.04~~ **Certain Limitations**. ~~The party~~A Buyer Indemnified Party or Seller Indemnified Party making a claim under this ARTICLE VII is referred to, generally, as the "**Indemnified Party**", and the party against whom such claims are asserted under this ARTICLE VII is referred to as the "**Indemnifying Party**". The indemnification provided for in Section 7.02 and Section 7.03 shall be subject to the following limitations:

(a) The Indemnifying Party shall not be liable to the Indemnified Party for indemnification under Section 7.02(b), Section 7.02(f) or Section 7.03(b), as the case may be, until the aggregate amount of all Losses in respect of indemnification under Section 7.02(b), Section 7.02(f) or Section 7.03(b) exceeds ~~three percent (3.0%) of the Closing Purchase Consideration~~$300,000 (the "**Indemnification ~~Deductible~~Basket**"), in which event the Indemnifying Party shall ~~only~~ be required to pay ~~or be liable for Losses in excess of the Deductible~~and be liable for all Losses incurred by the Indemnified Party from the first dollar; provided, however, that the Indemnification Basket will not apply to breaches of Fundamental Representations or of the representation and warranties contained in Section 3.11. With respect to any claims as to which the Indemnified Parties may be entitled to indemnification under Section 7.02(b), Section 7.02(f) or Section 7.03(b), as the case may be, the applicable Indemnifying Party shall only be liable as to

any individual item or series of related items where the Losses relating thereto exceed $30,000 (which Losses shall be counted toward the Indemnification Basket).

(b) The aggregate amount of all Losses for which an Indemnifying Party shall be liable pursuant to Section 7.02(b) or Section 7.03(b) as the case may be, shall not exceed thirty percent (30.0%) of the ~~Closing~~ Purchase ~~Consideration~~Price (the "**Indemnification Cap**"), provided, however, that the Indemnification Cap will not apply to breaches of Fundamental Representations or of the representation and warranties contained in Section 3.11.

(c) Payments by an Indemnifying Party pursuant to Section 7.02 ~~or~~and Section 7.03 in respect of any Loss shall be limited to the amount of any liability or damage that remains after deducting therefrom any insurance proceeds ~~and any indemnity, contribution or other similar payment received or reasonably expected to be~~ received by the Indemnified Party ~~(or the Company)~~ in respect of any such claim; provided that the amount deemed to be paid under an insurance policies shall be net of (i) the deductible for such policies and (ii) any increase in the premium for such policies, if applicable, arising from such Losses. The Indemnified Party shall use its commercially reasonable efforts to recover under insurance policies ~~or indemnity, contribution or other similar agreements~~ for any Losses prior to seeking indemnification from an Indemnifying Party under this Agreement.

(d) ~~Payments by an Indemnifying Party pursuant to Section 7.02 or Section 7.03 in respect of any Loss shall be reduced by an amount equal to any tax benefit realized or reasonably expected to be realized as a result of such Loss by the Indemnified Party.~~For purposes of determining whether a breach of any representation or warranty herein has occurred and calculating the Losses resulting from a breach of any representation or warranty herein, all qualifications with respect to materiality, "in all material respects," or Material Adverse Effect, or similar qualifications in such representation or warranty will be disregarded and will not be taken into account.

~~(e) In no event shall any Indemnifying Party be liable to any Indemnified Party for any punitive, incidental, consequential, special or indirect damages, including loss of future revenue or income, loss of business reputation or opportunity relating to the breach or alleged breach of this Agreement, or diminution of value or any damages based on any type of multiple.~~

~~(f) Each Indemnified Party shall take, and cause its Affiliates to take, all reasonable steps to mitigate any Loss upon becoming aware of any event or circumstance that would be reasonably expected to, or does, give rise thereto, including incurring costs only to the minimum extent necessary to remedy the breach that gives rise to such Loss.~~

~~(g) Seller shall not be liable under this ARTICLE VII for any Losses based upon or arising out of any inaccuracy in or breach of any of the representations or warranties of Seller contained in this Agreement if Buyer had knowledge of such inaccuracy or breach prior to the Closing.~~

Section 7.05. ~~Section 7.05~~ **Indemnification Procedures**.

(a) Third-Party Claims. If any Indemnified Party receives notice of the assertion or commencement of any action, suit, claim or other legal proceeding made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement or a Representative of the foregoing (a "**Third-Party Claim**") against such Indemnified Party with respect to which the Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party prompt written notice thereof. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Third-Party Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have the right to participate in, or by giving written notice to the Indemnified Party within fifteen (15) days of its receipt of the applicable claim notice, to assume the defense of any Third-Party Claim at the Indemnifying Party's expense and by the Indemnifying Party's own counsel, and the Indemnified Party shall cooperate in good faith in such defense~~.~~, so long as (i) the Indemnifying Party commits to indemnify the Indemnified Party in full for all Losses resulting from such Third-Party Claim and (ii) the Indemnifying Party conducts the defense in an active and diligent manner; provided that the Indemnifying Party shall not be entitled to assume control of such defense if (i) the claim for indemnification relates to or arises in connection with any criminal proceeding, action, indictment, allegation or investigation, (ii) the claim seeks as a principal form of relief any form of remedy other than monetary damages, (iii) upon petition by the Indemnified Party, the appropriate court rules that the Indemnifying Party failed or is failing to vigorously prosecute or defend such Third-Party Claim, and (iv) the Indemnified Party reasonably concludes, based on the advice of counsel, that the Indemnified Party and Indemnifying Party have conflicting interests with respect to such Third-Party Claim or that the Indemnified Party has one or more defenses not available to the Indemnifying Party. In the event that the Indemnifying Party assumes the defense of any Third-Party Claim, subject to Section 7.05(b), it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third-Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right, at its own cost and expense, to participate in the defense of any Third-Party Claim with counsel selected by it subject to the Indemnifying Party's right to control the defense thereof. If the Indemnifying Party elects not to compromise or defend such Third-Party Claim or fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, the Indemnified Party may, subject to Section 7.05(b), pay, compromise, defend such Third-Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third-Party Claim. Seller, Parent and Buyer shall reasonably cooperate with each other in all reasonable respects in connection with ~~the~~a proper and adequate defense of any Third-Party Claim, including by making available (subject to ~~the provisions of Section 5.04~~appropriate confidentiality restrictions, during normal business hours and on at least five (5) days' prior written notice) records relating to such Third-Party Claim and furnishing, without expense (other than reimbursement of actual

out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third-Party Claim.

(b) Settlement of Third-Party Claims. Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third-Party Claim without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld or delayed), except as provided in this Section 7.05(b). If a firm offer is made to settle a Third-Party Claim without leading to liability, admission of wrongdoing or the creation of a financial or other obligation on the part of the Indemnified Party and provides, in customary form, for the unconditional release of each Indemnified Party from all liabilities and obligations in connection with such Third-Party Claim and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to that effect to the Indemnified Party. The Indemnified Party shall not withhold or delay its consent to the extent the terms of such settlement would not result in (i) the imposition of a consent order, injunction or decree that would restrict the future activity or conduct of the Indemnified Party, (ii) a finding or admission of a violation of Law by the Indemnified Party, or (iii) any monetary liability of the Indemnified Party that will not be paid or reimbursed by the Indemnifying Party (except to the extent within the Indemnification Basket). If the Indemnified Party fails to consent to such firm offer that conforms with the requirements described above within fifteen (15) days after its receipt of ~~such~~the related notice, the Indemnified Party may continue to contest or defend such Third-Party Claim and in such event, the maximum liability of the Indemnifying Party as to such Third-Party Claim shall not exceed the amount of such settlement offer. If the Indemnified Party fails to consent to such firm offer and also fails to assume defense of such Third-Party Claim, the Indemnifying Party may settle the Third-Party Claim upon the terms set forth in such firm offer to settle such Third-Party Claim. If the Indemnified Party has assumed the defense pursuant to Section 7.05(a), it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

(c) Direct Claims. Any claim by an Indemnified Party on account of a Loss which does not result from a Third-Party Claim (a "**Direct Claim**") shall be asserted by the Indemnified Party giving the Indemnifying Party prompt written notice thereof. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have thirty (30) days after its receipt of such notice to respond in writing to such Direct Claim. During such thirty (30)-day period, the Indemnified Party shall allow the Indemnifying Party and its professional advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Indemnified Party shall assist the Indemnifying Party's investigation by giving such information and assistance (including access to the Company's premises and personnel and the right to examine and copy any accounts, documents or records) as the

Indemnifying Party or any of its professional advisors may reasonably request. If the Indemnifying Party does not so respond within such thirty (30)-day period, the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement.

(d) Tax Contests. This Section 7.05 shall have no force or effect regarding Tax Contests, which shall be governed by Section 5.09.

Section 7.06. ~~Section 7.06~~ **Tax Treatment of Indemnification Payments**. All indemnification payments made under this Agreement shall be treated by the parties as an adjustment to the Closing Purchase ~~Price~~Consideration for ~~tax~~Tax purposes, unless otherwise required by Law.

Section 7.07. ~~Section 7.07~~ **Exclusive Remedies**. Subject to Section 9.11, the parties acknowledge and agree that their sole and exclusive remedy with respect to any and all claims (other than claims arising from ~~intentional~~ fraud on the part of a party hereto in connection with the transactions contemplated by this Agreement) for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth in this ARTICLE VII. In furtherance of the foregoing, each party hereby waives, to the fullest extent permitted under Law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other parties hereto and their Affiliates and each of their respective Representatives arising under or based upon any Law, except pursuant to the indemnification provisions set forth in this ARTICLE VII. Nothing in this Section 7.07 shall limit any Person's right to seek and obtain any equitable relief to which any Person shall be entitled pursuant to Section 9.11 or to seek any remedy on account of ~~intentional~~ fraud by any party hereto.

Section 7.08. Set-Off Rights; Holdback. In the event that any Buyer Indemnified Party is entitled to indemnification for Losses pursuant to Section 7.02, Buyer shall have the right (but not the obligation) to set-off any amount due by Seller or Parent to any Buyer Indemnified Party against any amount which is owed by Buyer or any Buyer Indemnified Party to Seller or Parent, including, without limitation, the Royalty Consideration, any sums for which a Buyer Indemnified Party is entitled to indemnification under Section 7.02. Notwithstanding anything to the contrary in this Agreement, Buyer and/or the Owner, as applicable, shall have the right to withhold the payment of the Royalty Consideration to Seller up to an amount equivalent to all outstanding indemnification obligations, or potential indemnification obligations, of Seller and Parent for claims for indemnification by the Buyer Indemnified Parties (either in dispute or resolved) pursuant to this ARTICLE VII. The Buyer Indemnified Parties' rights to indemnification under Section 7.02 shall not be in any manner limited by or to this right of set-off. Any amounts set-off pursuant to this Section 7.08 shall be deemed paid to Seller and Parent pursuant to the applicable provisions of this Agreement, including (without limitation) ARTICLE II.

Section 7.09. Limitation on Distributions. Seller and Parent hereby agree that, at any moment during the survival period set forth under Section 7.01 when there is an outstanding

claim for indemnification for Losses or potential Losses by a Buyer Indemnified Party pursuant to Section 7.02 and the amount of Royalty Consideration available to be withheld by Buyer in accordance with Section 7.08 is insufficient to satisfy the potential indemnification obligations of Seller and Parent thereunder, then Seller and Parent shall maintain between them assets with value sufficient to satisfy such potential indemnification obligation if such obligations become due under the terms of this ARTICLE VII.

ARTICLE VIII
TERMINATION

Section 8.01. ~~Section 8.01~~ **Termination**. This Agreement may be terminated at any time prior to the Closing:

(a) by the mutual written consent of Seller and Buyer;

(b) by Buyer by written notice to Seller any time before Closing if:

(i) Buyer is not then in breach of any provision of this Agreement and there has been a ~~material~~ breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Seller or Parent pursuant to this Agreement that would give rise to the failure of any of the conditions specified in ARTICLE VI and such breach, inaccuracy or failure either (A) cannot be cured by Seller or Parent by the Drop Dead Date~~;~~ or (B) is not cured within twenty (20) Business Days after receipt by Seller of written notice thereof, or

(ii) any of the conditions set forth in Section 6.01 or Section 6.02 shall not have been fulfilled by the Drop Dead Date, unless such failure shall be due to the failure of Buyer to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing;

(c) by Seller by written notice to Buyer any time before Closing if:

(i) Seller ~~is~~and Parent are not then in breach of any provision of this Agreement and there has been a ~~material~~ breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Buyer pursuant to this Agreement that would give rise to the failure of any of the conditions specified in ARTICLE VI and such breach, inaccuracy or failure either (A) cannot be cured by Buyer by the Drop Dead Date~~;~~ or (B) is not cured within twenty (20) Business Days after receipt by Buyer of written notice thereof,

(ii) any of the conditions set forth in Section 6.01 or Section 6.03 shall not have been fulfilled by the Drop Dead Date, unless such failure shall be due to the failure of Seller or Parent to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing~~;~~, or

(iii) Seller or Parent accepts a Superior Proposal in accordance to the terms set forth under Section 5.10 and pays the Termination Fee and the Superior

Termination Fee to Buyer pursuant to Section 8.02 below, provided that Seller's termination of the Agreement pursuant to this Section 8.01(c)(iii) shall be conditioned upon Seller's payment of the Termination Fee pursuant to Section 8.03(a)(i); or

(d) by Buyer or Seller, by written notice to the other Party any time before Closing, in the event that:

(i) there shall be any Law that makes consummation of the transactions contemplated by this Agreement illegal or otherwise prohibited under Law~~;~~, or

(ii) any Governmental Authority shall have issued or threatened in writing to issue a Governmental Order restraining or enjoining the transactions contemplated by this Agreement~~, and such Governmental Order shall have become final and non-appealable~~.

Section 8.02. ~~Section 8.02~~ **Effect of Termination**. In the event of the termination of this Agreement in accordance with this ~~Article~~ARTICLE VIII:

(a) this Agreement shall forthwith become void and have no effect, and there shall be no liability on the part of any Party or their respective Affiliates or their respective directors, officers, shareholders, partners, members, attorneys, accountants, agents, representatives or employees or their heirs, successors and permitted assigns, except (i) as set forth in Section ~~5.04~~,5.04, this ARTICLE VIII and ARTICLE IX hereof ~~and~~(and any related definitional provisions set forth in ARTICLE I) and (ii) that nothing herein shall relieve any Party from liability for any intentional breach of any ~~provision hereof;~~covenant made by such Party in this Agreement; and

(b) unless such termination is pursuant to Section 8.01(c)(i), Buyer and Seller shall promptly (but in any event within three (3) Business Days) instruct the Escrow Agent to release the Deposit from the Escrow Account to Buyer (or its designees), pursuant to the terms of the Escrow Agreement.

Section 8.03. Termination Fees.

(a) Seller Termination Fee.

(i) In the event of termination of this Agreement pursuant to Section 8.01(b)(i) or Section 8.01(c)(iii), Seller shall pay or cause to be paid to Buyer, by wire transfer of immediately available funds to an account designated in writing by Buyer, a termination fee in an amount equal to $1,000,000 (the "**Termination Fee**"). The Termination Fee shall be payable (x) within three (3) Business Days of the date on which Buyer terminates this Agreement pursuant to Section 8.01(b)(i); or (y) within three (3) Business Days of the date on which Seller notifies Buyer of the termination of this Agreement by Seller pursuant to Section 8.01(c)(iii).

(ii) If following the termination of this Agreement by Seller pursuant to Section 8.01(b)(i) or Section 8.01(c)(iii), Seller consummates an Acquisition Transaction, then the Seller or Parent shall pay to Buyer by wire transfer of immediately available funds an amount equal to the amount by which the Superior Termination Fee exceeds the Termination Fee (such difference, the "**Excess Termination Payments**"). The Excess Termination Payments shall be paid to Buyer in the same manner and at the same time as the purchase price and other consideration is paid to Seller or its Affiliates pursuant to the applicable Acquisition Transaction.

(iii) Notwithstanding anything to the contrary in this Agreement, in the event that this Agreement is validly terminated pursuant to Section 8.01(b)(i) or Section 8.01(c)(iii), Buyer's receipt of the Termination Fee from Seller or Parent pursuant to Section 8.03(a)(i) and Section 8.03(a)(ii) shall be the sole and exclusive remedy of Buyer and its Affiliates against Seller, Parent, the Company and Seller's Affiliates for any Losses or liabilities of any kind suffered as a result of the failure of any of the transactions hereunder to be consummated or otherwise pursuant to or otherwise in respect of this Agreement. Notwithstanding anything herein to the contrary, in no event will Buyer be permitted or entitled to receive both a grant of specific performance pursuant to Section 9.11 and payment of the Termination Fee.

(b) ~~the Deposit shall be promptly refunded to Buyer if such termination is pursuant to Section 8.01(a), (b) or (d); and~~Buyer Termination Fee.

(i) Following the termination of this Agreement by Seller pursuant to Section 8.01(c)(i) Buyer shall pay or cause to be paid to Seller by wire transfer of immediately available funds to an account designated in writing by Seller, an amount equal to $1,000,000 (the "**Reverse Termination Fee**"). The Reverse Termination Fee shall be payable within three (3) Business Days of the date on which Seller terminates this Agreement pursuant to Section 8.01(c)(i).

(ii) Notwithstanding anything to the contrary in this Agreement, in the event that this Agreement is validly terminated pursuant to Section 8.01(c)(i), Seller's receipt of the Reverse Termination Fee pursuant to Section 8.03(b)(i) shall be the sole and exclusive remedy of Seller, Parent and their Affiliates against Buyer and its Affiliates for any Losses or liabilities of any kind suffered as a result of the failure of any of the transactions hereunder to be consummated or otherwise pursuant to or otherwise in respect of this Agreement. Notwithstanding anything herein to the contrary, in no event will Seller or Parent be permitted or entitled to receive both a grant of specific performance pursuant to Section 9.11 and payment of the Reverse Termination Fee.

(c) ~~the Deposit shall be promptly paid to Seller as liquidated damages if such termination is pursuant to Section 8.01(c).~~The parties hereto acknowledge that the agreements contained in this Section 8.03 are an integral part of the transactions contemplated by this Agreement and that without these agreement, the parties would not enter into this Agreement. The Receiver hereby represents and warranties that Receiver

has all necessary legal capacity and authority to agree to and carry out Seller's obligations under this Section 8.03, and that the performance of Seller's obligations under this Section 8.03 does not require the consent by any Government Authority.

ARTICLE IX
MISCELLANEOUS

Section 9.01. ~~Section 9.01~~ **Expenses**. Except as otherwise expressly provided herein, all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred.

Section 9.02. ~~Section 9.02~~ **Notices**. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient; or (d) on the third (3rd) Business Day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 9.02):

If to Seller or Parent:

c/o Platinum Partners
230 Park Avenue, 10th Floor, Suite 135
New York, NY 10169
Facsimile: (212) 582-2424
E-mail: bweisenberg@platinumlp.com
Attention: Brent Weisenberg, General Counsel

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

~~with a copy to:~~

Otterbourg P.C.
230 Park Avenue
New York, NY 10169
Facsimile: (212) 682-6104
E-mail: pberg@otterbourg.com
Attention: Philip C. Berg, Esq.

If to Buyer:

~~[●]~~Zanhav Holding LLC
~~[●]~~
c/o Gabriel Capital Corp.
445 Park Avenue, 17th Floor
New York, NY 10022
~~[●]~~
Facsimile: ~~[●]~~
212-838-9603

E-mail: ~~[●]~~ jemerkin@gabrielcapital.com
Attention: ~~[●]~~J. Ezra Merkin

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

~~[●]~~
~~[●]~~
~~[●]~~
~~Facsimile:~~ ~~[●]~~
~~E-mail:~~ ~~[●]~~
~~Attention:~~ ~~[●]~~

Dechert LLP
1900 K Street, NW
Washington, DC 20006
Facsimile: +1 (202) 261-3333
E-mail: bernardo.piereck@dechert.com
Attention: Bernardo Piereck de Sa

Andre Weiss
E-mail: andre.weiss.riverside@gmail.com

Section 9.03. ~~Section 9.03~~ **Interpretation**. For purposes of this Agreement: (a) the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Schedules and Exhibits mean the Articles and Sections of, and Schedules and Exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. Any Schedules and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

Section 9.04. ~~Section 9.04~~ **Headings**. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 9.05. ~~Section 9.05~~ **Severability**. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as

possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 9.06. ~~Section 9.06~~ **Entire Agreement**. This Agreement constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous representations, warranties, understandings and agreements, both written and oral, with respect to such subject matter.

Section 9.07. ~~Section 9.07~~ **Successors and Assigns**. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns. Neither Party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. No assignment shall relieve the assigning party of any of its obligations hereunder.

Section 9.08. ~~Section 9.08~~ **No Third-~~party~~Party Beneficiaries**. Except as provided in ARTICLE VII and in ARTICLE VIII, this Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 9.09. ~~Section 9.09~~ **Amendment and Modification; Waiver**. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Section 9.10. ~~Section 9.10~~ **Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.**

(a) This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction).

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY SHALL BE BROUGHT IN THE UNITED STATES DISTRICT COURT OF THE EASTERN DISTRICT OF NEW YORK (OR IF JURISDICTION IS NOT AVAILABLE IN SUCH COURT, THEN IN THE STATE COURT OF NEW YORK SITTING IN MANHATTAN), AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR

OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS ~~SECTION~~Section 9.10(c).

Section 9.11. ~~Section 9.11~~ **Specific Performance**. The ~~parties~~Parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the ~~parties~~Parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity. No Party hereto shall oppose, argue, contend or otherwise be permitted to raise as a defense that an adequate remedy at Law exists or that specific performance or equitable or injunctive relief is inappropriate or unavailable.

Section 9.12. ~~Section 9.12~~ **Counterparts**. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

Section 9.13. ~~Section 9.13~~ **Non-recourse**. This Agreement may only be enforced against, and any claim, action, suit or other legal proceeding based upon, arising out of, or related to this Agreement, or the negotiation, execution or performance of this Agreement, may only be brought against the entities that are expressly named as Parties hereto (including their respective successors and assigns, Owner and any Transferee Owner) and then only with respect to the specific obligations set forth herein with respect to such ~~entity~~entities. No past, present or future

director, officer, employee, incorporator, manager, member, partner, stockholder, Affiliate, agent, attorney or other Representative of any Party hereto or of any Affiliate of any Party hereto, or any of their successors or permitted assigns, shall have any liability for any obligations or liabilities of any party hereto under this Agreement or for any claim or ~~Action~~action based on, in respect of or by reason of the transactions contemplated hereby; provided, however, that nothing in this Section 9.13 or in this Agreement shall limit (i) the liability of any Person for any claim, action, suit or other legal proceeding based upon, arising out of, or related to this Agreement based on fraud or (ii) the remedies or recovery available to any Party against any Person for any claim, action, suit or other legal proceeding based upon, arising out of, or related to this Agreement based on fraud.

Section 9.14. Currency Matters.

(a) Dollars are the sole currency for the payment for all sums payable under or in connection with this Agreement. In all cases where it is necessary to pay an amount in Dollars where the underlying value of such amount is expressed in Brazilian Reais, such value shall be converted into Dollars using the commercial selling rate at closing for purchase of Dollars, published by the Brazilian Central Bank on its electronic information system, the special system for clearance and custody (*Sistema Especial de Liquidação e Custódia*), or SISBACEN, using transaction PTAX 800, option 5, in effect on each of the five (5) consecutive Business Days immediately preceding the date on which such payment is required to be made, net of all reasonable and documented customary currency conversion costs actually incurred by the paying party.

(b) For purposes of applying any Dollars denominated threshold amounts or limitations on indemnification to Losses denominated in a currency other than Dollars, the amounts of such Losses shall be converted into Dollars using the commercial selling rate at closing for purchase of Dollars, published by the Brazilian Central Bank on its electronic information system, the special system for clearance and custody (*Sistema Especial de Liquidação e Custódia*), or SISBACEN, using transaction PTAX 800, option 5, in effect, on each of the five (5) consecutive Business Days immediately preceding the date on which the indemnification payment for such Loss is made.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused this Purchase, Sale and Royalty Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

PLATINUM PARTNERS CREDIT OPPORTUNITIES MASTER FUND LP

By_____
Name:
Title:

~~[BUYER NAME]~~**MELANIE L. CYGANOWSKI** (as Receiver)

_____

WEST VENTURES LLC

By_____
Name:
Title:

ZANHAV HOLDING LLC

By_____
Name:

Title:

Exhibit A
~~Description of the~~ **Property**
~~[*See attached.*]~~

Exhibit B

Approval Order

Document comparison by Workshare Compare on Tuesday, July 03, 2018 3:13:30 PM

Input:	
Document 1 ID	file:////dechert.com/users/nyc/ctomazella/Desktop/Projects/Midas/Project Midas - Form of Purchase Sale and Royalty Agreement - corrected.doc
Description	Project Midas - Form of Purchase Sale and Royalty Agreement - corrected
Document 2 ID	interwovenSite://NA_IMANAGE/BUSINESS/24573199/20
Description	#24573199v20<BUSINESS> - Midas - Purchase Sale and Royalty Agreement (Dechert 7.3.2018)
Rendering set	standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	1040
Deletions	411
Moved from	13
Moved to	13
Style change	0
Format changed	0

Total changes	1477

Exhibit 2

[EXECUTION COPY]

ZANHAV HOLDINGS LLC
c/o Gabriel Capital Corp.
445 Park Avenue, 17th Floor
New York, NY 10022

August 2, 2018

Hon. Melanie Cyganowski
Otterbourg P.C.
230 Park Avenue
New York, NY 10169-0075
Re: Supplemental Proposal | Project Midas

Dear Hon. Melanie Cyganowski:

We refer to the certain letters dated as of July 3, 2018 and July 17, 2018 and the email dated July 22, 2018 from or on behalf Zanhav Holding LLC (the "Buyer" "us" or "we") to Richard Saltzman re: Project Midas (the "Prior Zanhav Bids"). Capitalized terms not defined herein shall have the meaning ascribed to them in the Agreement (as such term is defined in the Prior Zanhav Bids).

We hereby present, for your consideration, as a supplement to the terms of our Prior Zanhav Bids, the proposal outlined below. We believe that such proposal constitutes a clearly superior bid in contrast to the Centerbridge deal that you accepted. We also urge you to adjourn the objection date in the pending motion for approval of the sale of the Abdala Tailings Dam to the Centerbridge Parties to enable that process to continue.

1. Consideration. With reference to the extremely limited information included in your "DECLARATION IN SUPPORT OF MOTION TO APPROVE SALE OF ABDALA," we hereby make the following offer:

   Zanhav shall acquire the Abdala Tailings Dam for purchase consideration of: (i) $30 million in cash at closing, plus (ii) an additional $5.0 million, creditable against future royalty payments, conditioned on near-term resource testing of the Tailings Dam resulting in a head grade of at least nine (9) grams per ton, plus (iii) a royalty of 7.5% of the ounces of gold processed for the account of Zanhav from the Abdala Tailings Dam after a Threshold Amount of 128,625 ounces (calculated to allow Zanhav also to achieve a 3.0x multiple of invested capital).

   Our proposal is conditioned on the Centerbridge Superior Offer Termination Fee or any other break-up fee arrangement being disallowed. It is our view that the approval of such an arrangement in what has clearly been a one-sided arrangement would be patently unfair to the Buyer and to the Platinum investors.

   We believe that there can be no real dispute that our revised proposal is financially superior to the Centerbridge arrangement. By referencing the metric for return on invested capital that you used in your Declaration, our proposal would return nearly 2.2X

Platinum's invested capital, far superior to the 1.8X return that you found compelling in accepting the Centerbridge proposal.

We also note that we have previously provided you material evidencing the expertise and experience of our team and further note that our Project would be led by Elliott Bertram and JDS Mining. Inasmuch as you had never queried our capabilities, we assume that our capabilities are completely satisfactory to you.

We are making our proposal, as described below available only until August 6, 2018, at 5 pm, New York time. The failure to accept our new proposal by that time accompanied by an a standard binding agreement to deal with the Buyer exclusively through August 24, 2018, at 5 pm, New York time, would render our entire proposal null and void.

2. Timing to Signing. Based on the feedback received from Houlihan Lokey regarding minimal concerns regarding the Agreement, we remain confident that our attorneys and the Receiver's attorneys can work expeditiously to quickly finalize and execute the Agreement.

3. Contact Information. If you have any questions on this letter, please contact Andre Weiss at 917-355-8100 or andre.weiss.riverside@gmail.com.

4. Expiration. As indicated above, our proposal, unless extended in writing by us, expires on August 6, 2018 at 5:00pm New York time.

Except as expressly amended or modified hereby, all of the terms and provisions of the Prior Zanhav Bid shall remain unchanged and in effect in accordance with its terms.

This is our fourth bid of the second round in the sale of the Abdala Tailings Dam. For the reasons we expect to set forth in an objection to the Motion to Approve the Sale of Abdala, we believe that the Receiver and/or its agents have utterly failed properly to devise and implement a sale process designed to obtain the highest price for the Abdala Tailings Dam, thereby disadvantaging the Buyer and harming the investors in Platinum Partners Credit Opportunities Master Fund LP. Specifically, we believe that you and your professionals failed to create a level playing field that gave due consideration to the Prior Zanhav Bids and failed to engage meaningfully with Zanhav and its principals as you and they obviously did with the Centerbridge parties. Had you and they done so, we would have presented a different format reflecting the contingencies that you found acceptable in the winning bid, and would have fashioned a proposal plainly more attractive than the winning bid.

We note, in particular, that you had decided against conducting an industry-recognized validation of the gold content of the tailings. All indications from you and your advisors were that conditioning any aspect of a proposal on the results of such a validation would not be considered favorably. We now understand from the winning bid that, contrary to the guidance

we were given, you welcome such conditioning. We are thus able to make a proposal that reflects the evolution in your thinking.

If you are in agreement with the terms in this proposal, as supplemented by this letter, and desire to proceed with the Transaction on that basis, please execute from of exclusivity letter previously provided to Richard Saltzman, indicating which consideration alternative you wish to pursue, and return an executed copy together with an exclusivity agreement as described above to Andre Weiss, c/o Gabriel Capital Corp, 445 Park Avenue, 17th Floor, New York, NY 10022. If for whatever reason, you fail to accept our proposal herein, we would expect that you would engage with us in a fashion that would create an open and balanced process and permit us to address any concerns that you have. We look forward to hearing from you.

Very truly yours,

ZANHAV HOLDINGS LLC

By: /s/ J. Ezra Merkin
J. Ezra Merkin
Authorized Signatory

Agreed to and accepted as of the date set forth below by:

PLATINUM PARTNERS CREDIT
OPPORTUNITIES MASTER FUND LP

By: _____
Name: Hon. Melanie Cyganowski
Title: Receiver
Date:

WEST VENTURES LLC

By: _____
Name:
Title:
Date:

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

– against –

PLATINUM MANAGEMENT (NY) LLC, PLATINUM CREDIT MANAGEMENT, L.P., MARK NORDLICHT, DAVID LEVY, DANIEL SMALL, URI LANDESMAN, JOSEPH MANN, JOSEPH SANFILIPPO, and JEFFREY SHULSE,

Defendants.

ZANHAV HOLDING LLC and PIPING BROOK LLC,

Objectors.

No. 16-cv-6848 (BMC)

OBJECTORS ZANHAV HOLDING LLC'S AND PIPING BROOK LLC'S REQUEST FOR PRODUCTION OF DOCUMENTS TO THE RECEIVER

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Objectors Zanhav Holding LLC ("Zanhav") and Piping Brook LLC ("Piping Brook" and collectively, "Objectors") hereby request that the Hon. Melanie L. Cyganowski, as the duly appointed Receiver of the Platinum Entities (the "Receiver"), produce the following documents for inspection and copying at the offices of Dechert LLP, 1095 Avenue of the Americas, New York, New York 10036, or at such other location upon which the Objectors and the Receiver may mutually agree, at a time to be determined by the Objectors and the Receiver in connection with the Court's hearing on the Receiver's pending Motion for Entry of an Order Approving the Sale of the Receivership's Rights in and to the Gold Tailings Pond Known as "Abdala".

DEFINITIONS

1. "Affiliate" of any person shall mean any person that directly or indirectly controls, is controlled by, or is under common control with such person. As used in this definition, "controls" (including, with its correlative meanings, "controlled by" and "under common control with") means possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities, partnership, or other ownership interests, by contract or otherwise). As to limited partnerships, this definition shall include the general partners and limited partners thereof and any of their Affiliates. As to limited liability companies, this definition shall include the members thereof and any of their Affiliates.

2. The "Receiver's Declaration" shall refer to the Declaration of Melanie L. Cyganowski, As Receiver, in Support of Motion to Approve Sale of Abdala and to Pay Brazilian Counsel from the Sale Proceeds dated July 27, 2018. (ECF No. 357-1.)

3. The "Receiver" shall refer to the Hon. Melanie L. Cyganowski, as the duly appointed Receiver of the Platinum Entities, as well as any counsel, financial advisors, or any other professionals retained by the Receiver.

4. The "Abdala Tailings Project" shall refer to the Platinum Receivership's rights to extract gold for a period of ten years from a certain tailings pond near Cuiababa, Brazil, as referenced in paragraph 8 of the Receiver's Declaration. (*See* ECF No. 357-1 at 4.)

5. The "Centerbridge Bid" shall refer to any bid or series of bids for the Abdala Tailings Project made by the Centerbridge Partners, L.P. or any Affiliate thereof.

6. The "PSRA" shall refer to that Purchase, Sale and Royalty Agreement among Platinum Partners Opportunities Master Fund LP, West Ventures LLC, CB Midas Holdings,

LLC and CB Midas Brazil Participações Ltda. dated as of July 24, 2018, as referenced in paragraph 28 of the Receiver's Declaration. (*See* ECF No. 357-1 at 11.)

7. The "Platinum PSRA Parties" shall refer to Platinum Partners Opportunities Master Fund LP and West Ventures LLC, as well as any Affiliate thereof.

8. The "Centerbridge PSRA Parties" shall refer to CB Midas Holdings, LLC, CB Midas Brazil Participações Ltda. and any Affiliate thereof.

9. The "Second Round Bids" shall refer to the final bids for the Abdala Tailings Project, as referenced in paragraph 23 of the Receiver's Declaration. (*See* ECF No. 357-1 at 9.)

10. The "Zanhav Revised Bid" shall refer to the bid of Zanhav Holding LLC dated August 2, 2018.

11. "Communication" shall mean any transfer of information of any type, written, oral, electronic, or otherwise.

12. "Document" shall be interpreted in the broadest sense and includes, but is not limited to, all written, printed, photocopied, computer generated, or electronically transmitted materials, including e-mails, attachments to e-mails, voicemails, writings, publications, messages, text messages, communications, facsimiles, computer tapes, microfilm or microfiche, drawings, graphs, charts, photographs, and other data compilations from which information can be obtained and translated if necessary, by you into reasonably useable and searchable form, including information in native format. A draft or non-identical copy is considered a separate document. The term "document" includes generally any kind of document that is now, or formerly was, in your possession, custody, or control, or that was known to you to exist, or that you can locate or discover by reasonably diligent efforts.

13. "You" and "Your" shall mean the person or entity responding to these requests.

INSTRUCTIONS

1. Receiver shall produce every document described in the specific requests set forth below in their respective possession, custody, or control.

2. "And" and "or" shall be construed both disjunctively and conjunctively in order to bring within the scope of these discovery requests all responses that might otherwise be construed to be outside their scope.

3. "Any" and "all" shall be construed to mean "any and all."

4. The use of the singular shall be deemed to include the plural, and the use of one gender shall include the other, as appropriate in context.

5. "Including" shall be construed to mean "including without limitation."

6. All drafts of responsive Documents must be produced, as well as non-identical copies.

7. If any document requested herein is withheld on the basis of any claim of privilege or pursuant to any other legal doctrine, in lieu of producing such document, You must provide a written statement: (i) describing the nature of the document (*e.g.*, letter, memorandum, minutes, telegram, notes, etc.); (ii) specifying the date on which the document was prepared; (iii) identifying the person(s) who prepared or authored the document including their job titles; (iv) identifying the person(s) to whom the document was sent, copied, or shown including their job titles; (v) identifying the document's present location and custodian; (vi) setting forth the subject matter of the document; (vii) stating the basis upon which the asserted privilege is claimed; and (viii) identifying the requests to which the document is responsive.

8. If any document is not produced in full, produce it to the extent possible, and identify each page or portion of the document withheld, and the reason that portion of the document is being withheld.

9. Documents shall be produced as they are kept in the usual course of business or organized and labeled to correspond to the categories in this request. All Documents shall be produced in the file folder, envelope or other container in which the Documents are kept or maintained by you. If, for any reason, the container cannot be produced, produce copies of all labels or other identifying marks.

10. In responding to these requests, if you encounter any ambiguity in construing an individual request or any definitions and instructions relevant thereto, you shall set forth the matter or term deemed ambiguous and the construction chosen or used in responding to such request.

11. Unless otherwise specified, the requests seek Documents and information prepared, sent, provided, received, created, or in Your possession during, or relating to, the period from December 13, 2017, to the present.

12. These requests are continuing in nature. If, after producing all responsive Documents, you obtain or become aware of any additional responsive Documents, you are required to provide such information by way of supplemental responses.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. The PSRA.

2. Any agreements relating to or referenced in the PSRA between or among any two or more parties to the PSRA.

3. All Documents on which the Receiver or the Platinum PSRA Parties relied in forming the decision to accept the Centerbridge Bid.

4. All Documents on which the Receiver or the Platinum PSRA Parties relied in forming the decision not to consider the Zanhav Revised Bid.

5. All Documents on which the Receiver or the Platinum PSRA Parties relied in forming the decision not to accept the Zanhav Revised Bid.

6. The Second Round Bids.

7. All Documents regarding the value of (i) the Abdala Tailings Project or (ii) the Second Round Bids.

8. All Communications between the Receiver or the Platinum PSRA Parties, on the one hand, and any individuals or entities who made the Second Round Bids, on the other.

Dated: New York, New York
August 3, 2018

DECHERT LLP

By: _____
Neil A. Steiner

1095 Avenue of the Americas
New York, New York 10036
neil.steiner@dechert.com
Tel.: (212) 698-3822
Fax: (212) 698-0480

Attorneys for Objectors
Zanhav Holding LLC and Piping Brook LLC