UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the Quarterly Period Ended September 30, 2016

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

Commission file number 001-35416

U.S. Silica Holdings, Inc.

(Exact name of registrant as specified in its charter)

Delaware	**26-3718801**
(State or other jurisdiction of Incorporation or Organization)	**(I.R.S. Employer Identification No.)**

8490 Progress Drive, Suite 300
Frederick, Maryland 21701
(Address of Principal Executive Offices) (Zip Code)

(301) 682-0600
(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	☒	Accelerated filer	☐
Non-accelerated filer	☐	Smaller reporting company	☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

As of November 2, 2016, 70,636,892 shares of common stock, par value $0.01 per share, of the registrant were outstanding.

U.S. Silica Holdings, Inc.
FORM 10-Q
For the Quarter Ended September 30, 2016

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PART I—FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

U.S. SILICA HOLDINGS, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(dollars in thousands)

	September 30, 2016	December 31, 2015
	(unaudited)	(audited)
ASSETS		
Current Assets:		
Cash and cash equivalents	$ 264,060	$ 277,077
Short-term investments	—	21,849
Accounts receivable, net	70,725	58,706
Inventories, net	77,429	65,004
Prepaid expenses and other current assets	14,092	9,921
Income tax deposits	8,017	6,583
Total current assets	434,323	439,140
Property, plant and mine development, net	790,565	561,196
Goodwill	233,196	68,647
Trade names	32,318	14,474
Intellectual property	57,700	—
Customer relationships, net	56,700	6,453
Other assets	16,031	18,709
Total assets	$ 1,620,833	$ 1,108,619
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current Liabilities:		
Accounts payable	$ 68,692	$ 49,631
Dividends payable	4,546	3,453
Accrued liabilities	12,821	11,708
Accrued interest	57	58
Current portion of capital leases	1,136	—
Current portion of long-term debt	6,745	3,330
Deferred revenue	9,131	15,738
Total current liabilities	103,128	83,918
Long-term debt	499,886	488,375
Deferred revenue	66,030	59,676
Obligations under capital lease	1,281	—
Liability for pension and other post-retirement benefits	63,715	55,893
Deferred income taxes, net	57,330	19,513
Other long-term obligations	18,668	17,077
Total liabilities	810,038	724,452
Stockholders' Equity:		
Preferred stock	—	—
Common stock	708	539
Additional paid-in capital	660,448	194,670
Retained earnings	175,210	220,974
Treasury stock, at cost	(5,105)	(15,845)
Accumulated other comprehensive loss	(20,466)	(16,171)
Total stockholders' equity	810,795	384,167
Total liabilities and stockholders' equity	$ 1,620,833	$ 1,108,619

The accompanying notes are an integral part of these financial statements.

U.S. SILICA HOLDINGS, INC.

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS

(unaudited; dollars in thousands, except per share amounts)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
Sales	$ 137,748	$ 155,408	$ 377,252	$ 506,877
Cost of goods sold (excluding depreciation, depletion and amortization)	119,426	122,599	328,884	378,452
Operating expenses				
Selling, general and administrative	18,472	13,559	48,560	47,095
Depreciation, depletion and amortization	17,175	15,158	46,940	42,096
	35,647	28,717	95,500	89,191
Operating income (loss)	(17,325)	4,092	(47,132)	39,234
Other income (expense)				
Interest expense	(6,684)	(6,684)	(19,974)	(20,448)
Other income, net, including interest income	493	309	2,891	818
	(6,191)	(6,375)	(17,083)	(19,630)
Income (loss) before income taxes	(23,516)	(2,283)	(64,215)	19,604
Income tax benefit	12,177	4,695	30,102	7,584
Net income (loss)	$ (11,339)	$ 2,412	$ (34,113)	$ 27,188
Earnings (loss) per share:				
Basic	$ (0.17)	$ 0.05	$ (0.55)	$ 0.51
Diluted	$ (0.17)	$ 0.04	$ (0.55)	$ 0.51
Weighted average shares outstanding:				
Basic	66,676	53,321	61,512	53,386
Diluted	66,676	53,742	61,512	53,831
Dividends declared per share	$ 0.06	$ 0.13	$ 0.19	$ 0.38

The accompanying notes are an integral part of these financial statements.

U.S. SILICA HOLDINGS, INC.

CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME

(unaudited; dollars in thousands)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
Net income (loss)	$ (11,339)	$ 2,412	$ (34,113)	$ 27,188
Other comprehensive income (loss):				
Unrealized gain (loss) on derivatives (net of tax of ($2) and $10 for the three months ended September 30, 2016 and 2015, respectively, and $7 and $18 for the nine months ended September 30, 2016 and 2015, respectively)	(3)	17	12	29
Unrealized gain (loss) on investments (net of tax of $0 and $3 for the three months ended September 30, 2016 and 2015, respectively, and ($4) and $33 for the nine months ended September 30, 2016 and 2015, respectively)	—	4	(6)	53
Pension and other post-retirement benefits liability adjustment (net of tax of $176 and ($2,431) for the three months ended September 30, 2016 and 2015, respectively, and ($2,592) and $157 for the nine months ended September 30, 2016 and 2015, respectively)	293	(3,924)	(4,301)	254
Comprehensive income (loss)	$ (11,049)	$ (1,491)	$ (38,408)	$ 27,524

The accompanying notes are an integral part of these financial statements.

U.S. SILICA HOLDINGS, INC.

CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY

(unaudited; dollars in thousands, except per share amounts)

	Common Stock	Treasury Stock	Additional Paid-In Capital	Retained Earnings (Deficit)	Accumulated Other Comprehensive Income (Loss)	Total Stockholders' Equity
Balance at December 31, 2015	$ 539	$ (15,845)	$ 194,670	$ 220,974	$ (16,171)	$ 384,167
Net income (loss)	—	—	—	(34,113)	—	(34,113)
Issuance of common stock (secondary offering at $20 per share, net of issuance costs of $13,798)	100	—	186,102	—	—	186,202
Issuance of common stock for acquisitions (net of issuance costs of $170)	69	—	277,990	—	—	278,059
Unrealized gain on derivatives	—	—	—	—	12	12
Unrealized loss on short-term investments	—	—	—	—	(6)	(6)
Pension and post-retirement liability	—	—	—	—	(4,301)	(4,301)
Cash dividend declared ($0.1875 per share)	—	—	—	(11,799)	—	(11,799)
Common stock-based compensation plans activity:						
Equity-based compensation	—	—	9,075	—	—	9,075
Net tax effect	—	—	—	148	—	148
Proceeds from options exercised	—	7,665	(3,332)	—	—	4,333
Issuance of restricted stock	—	1,388	(1,388)	—	—	—
Shares withheld for employee taxes related to vested restricted stock and stock units	—	1,687	(2,669)	—	—	(982)
Balance at September 30, 2016	$ 708	$ (5,105)	$ 660,448	$ 175,210	$ (20,466)	$ 810,795

The accompanying notes are an integral part of these financial statements.

U.S. SILICA HOLDINGS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(unaudited; dollars in thousands)

	Nine Months Ended September 30,	
	2016	**2015**
Operating activities:		
Net income (loss)	$ (34,113)	$ 27,188
Adjustments to reconcile net income (loss) to net cash provided by operating activities:		
Depreciation, depletion and amortization	46,940	42,096
Debt issuance amortization	1,045	1,054
Original issue discount amortization	283	288
Deferred income taxes	(29,858)	(8,463)
Deferred revenue	(5,644)	(12,712)
Loss on disposal of property, plant and equipment	240	1,007
Equity-based compensation	9,075	1,824
Excess tax benefit from equity-based compensation	—	(225)
Bad debt provision	(86)	(426)
Other	2,560	(7,462)
Changes in operating assets and liabilities, net of effects of acquisitions:		
Accounts receivable	2,979	35,702
Inventories	(8,931)	(3,959)
Prepaid expenses and other current assets	(2,259)	(3,303)
Income taxes	5,223	(5,514)
Accounts payable and accrued liabilities	11,679	(31,655)
Accrued interest	(1)	(2)
Liability for pension and other post-retirement benefits	938	978
Net cash provided by operating activities	70	36,416
Investing activities:		
Capital expenditures	(32,756)	(38,167)
Capitalized intellectual property costs	(259)	—
Maturities of short-term investments	21,872	29,388
Acquisition of business, net of cash acquired	(176,447)	—
Proceeds from sale of property, plant and equipment	84	77
Net cash used in investing activities	(187,506)	(8,702)
Financing activities:		
Dividends paid	(10,706)	(20,117)
Repurchase of common stock	—	(15,255)
Issuance of common stock	200,000	—
Common stock issuance costs	(13,968)	—
Proceeds from options exercised	4,333	364
Excess tax benefit from equity-based compensation	—	225
Tax payments related to shares withheld for vested restricted stock	(982)	(747)
Repayment of long-term debt	(4,035)	(3,826)
Principal payments on capital lease obligations	(223)	—
Financing fees	—	(64)
Net cash provided by/(used in) financing activities	174,419	(39,420)
Net (decrease) in cash and cash equivalents	(13,017)	(11,706)
Cash and cash equivalents, beginning of period	277,077	263,066
Cash and cash equivalents, end of period	$ 264,060	$ 251,360
Supplemental cash flow information:		
Cash paid (received) during the period for:		
Interest	$ 15,953	$ 16,359
Taxes	$ (5,445)	$ 6,176
Non-cash Items:		
Capital lease obligations incurred to acquire assets	$ 165	$ —
Common stock issued in connection with acquisitions	$ 278,229	$ —

The accompanying notes are an integral part of these financial statements.

NOTE A—SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation and Consolidation

The accompanying Condensed Consolidated Financial Statements (the "Financial Statements") of U.S. Silica Holdings, Inc. ("Holdings," and together with its subsidiaries "we," "us" or the "Company") included in this Quarterly Report on Form 10-Q, have been prepared in accordance with generally accepted accounting principles in the United States ("GAAP") for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X issued by the U.S. Securities and Exchange Commission ("SEC"). They do not contain certain information included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2015; therefore, the interim Condensed Consolidated Financial Statements should be read in conjunction with that Annual Report on Form 10-K. In the opinion of management, all adjustments necessary for a fair presentation of the Financial Statements have been included. Such adjustments are of a normal, recurring nature. We have reclassified certain immaterial amounts in the prior years' operating activities section of the consolidated statement of cash flows to conform to the current year presentation. These reclassifications had no effect on previously reported net cash flows from operations.

In order to make this report easier to read, we refer throughout to (i) our Condensed Consolidated Balance Sheets as our "Balance Sheets," (ii) our Condensed Consolidated Statements of Operations as our "Income Statements," and (iii) our Condensed Consolidated Statements of Cash Flows as our "Cash Flows."

Unaudited Interim Financial Statements

The accompanying Balance Sheet as of September 30, 2016; the Income Statements and Condensed Consolidated Statements of Comprehensive Income for the three and nine months ended September 30, 2016 and 2015; the Condensed Consolidated Statements of Stockholders' Equity and Cash Flows for the nine months ended September 30, 2016; and other information disclosed in the related notes are unaudited. The Balance Sheet as of December 31, 2015 was derived from our audited consolidated financial statements as included in our 2015 Annual Report.

Use of Estimates and Assumptions

The preparation of the Financial Statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and the related disclosure of contingent assets and liabilities at the date of the Financial Statements and the reported amounts of revenues and expenses during the reporting period. The more significant areas requiring the use of management estimates and assumptions relate to purchase price allocation for businesses acquired; mineral reserves that are the basis for future cash flow estimates utilized in impairment calculations and units-of-production amortization calculations; environmental, reclamation and closure obligations; estimates of recoverable minerals; estimates of allowance for doubtful accounts; estimates of fair value for certain reporting units and asset impairments (including impairments of goodwill and other long-lived assets); write-downs of inventory to net realizable value; equity-based compensation expense; post-employment, post-retirement and other employee benefit liabilities; valuation allowances for deferred tax assets; reserves for contingencies and litigation; and the fair value and accounting treatment of financial instruments including derivative instruments. We base our estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances. Accordingly, actual results may differ significantly from these estimates under different assumptions or conditions.

Recently Issued Accounting Pronouncements

In February 2016, the Financial Accounting Standards Board (FASB) issued an Accounting Standards Update 2016-02, "Leases", which supersedes the existing lease guidance and requires all leases with a term greater than 12 months to be recognized on the balance sheet as assets and obligations. This Update is effective for public entities for financial statements issued for fiscal years beginning after December 15, 2018, including interim periods within those fiscal years; early application is permitted. This standard mandates a modified retrospective transition method. We are currently evaluating the effect that the new guidance will have on our financial statements and related disclosures.

On July 22, 2015, the FASB issued Accounting Standards Update 2015-11, "Simplifying the Measurement of Inventory". The new standard requires an entity to measure most inventory at the lower of cost and net realizable value, thereby simplifying the current guidance under which an entity must measure inventory at the lower of cost or market. The new standard will not apply to inventories that are measured using either the last-in, first-out (LIFO) method or the retail inventory

method. This Update is effective for public entities for financial statements issued for fiscal years beginning after December 15, 2016, including interim periods within those fiscal years; early application is permitted. We have elected to adopt the standard early effective January 1, 2016 prospectively and have measured our inventory at the lower of cost and net realizable value on our Balance Sheet as of September 30, 2016. The impacts of the early adoption of this Update on our Financial Statements are not significant.

In March 2016, the FASB issued Accounting Standards Update 2016-09, "Compensation-Stock Compensation." The update requires that excess tax benefits and deficiencies be recorded in the income statement when the awards vest or are settled. It also eliminates the requirement that excess tax benefits be realized (reduce cash taxes payable) before being recognized. Previously, an entity could not recognize excess tax benefits if the tax deduction increased a net operating loss ("NOL") or tax credit carryforward. The updated standard no longer requires cash flows related to excess tax benefits to be presented as a financing activity separate from other income tax cash flows. The update also allows the employer to repurchase more of an employee's shares for tax withholding purposes without triggering liability accounting, clarifies that all cash payments to taxing authorities made on an employee's behalf for withheld shares should be presented as a financing activity on the statement of cash flows, and provides for an accounting policy election to account for forfeitures as they occur. The update is effective for annual periods beginning after December 15, 2016, and interim periods within those annual periods, with early adoption permitted.

We elected to early adopt this update during the three months ended September 30, 2016, which requires any adjustments to be reflected as of January 1, 2016. This resulted in the recognition of excess tax benefits on our Balance Sheet that were previously not recognized, as the benefits would have increased our NOL or tax credit carryforwards. The recognition decreased net deferred tax liability by $0.1 million and $1.7 million as of January 1, 2016 and September 30, 2016, respectively. Retained earnings on January 1, 2016 was increased accordingly by $0.1 million. In addition, we will recognize excess tax benefits in the provision for income taxes rather than paid-in capital for 2016 and future periods. Adoption of the update resulted in the recognition of excess tax benefits in the provision for income taxes of $1.8 million and $1.7 million for the three and nine months ended September 30, 2016, respectively.

The effect of the adoption of this update on our previously reported income tax provision on our Income Statement was a decrease in tax benefit of $0.3 million for the three months ended March 31, 2016 and an increase in tax benefit of $0.2 million for the three months ended June 30, 2016, respectively.

We elected to include excess tax benefits as operating activities in the Cash Flow on a prospective basis. Prior periods are not adjusted. We also made the accounting policy election to account for forfeitures as they occur.

NOTE B—CAPITAL STRUCTURE AND ACCUMULATED COMPREHENSIVE INCOME

Common Stock

Our Amended and Restated Certificate of Incorporation authorizes up to 500,000,000 shares of common stock, par value of $0.01. Subject to the rights of holders of any series of preferred stock, all of the voting power of the stockholders of Holdings shall be vested in the holders of the common stock.

In March 2016, we completed a public offering of 10,000,000 shares of our common stock for total cash proceeds of approximately $186.2 million net of underwriting discounts and offering costs. In August 2016, we issued an additional 6,825,693 shares of our common stock to complete two acquisitions discussed in Note C - Business Combinations. There were 70,615,466 shares of common stock issued and outstanding at September 30, 2016. As of September 30, 2015, there were 53,386,174 shares issued and outstanding.

During the nine months ended September 30, 2016, our Board of Directors declared quarterly cash dividends as follows:

Dividends per Common Share	Declaration Date	Record Date	Payable Date
$ 0.0625	February 22, 2016	March 15, 2016	April 5, 2016
$ 0.0625	May 5, 2016	June 15, 2016	July 6, 2016
$ 0.0625	July 21, 2016	September 15, 2016	October 4, 2016

All dividends were paid as scheduled.

Any determination to pay dividends and other distributions in cash, stock, or property by Holdings in the future will be at the discretion of our Board of Directors and will be dependent on then-existing conditions, including our business conditions, our financial condition, results of operations, liquidity, capital requirements, contractual restrictions including restrictive covenants contained in our debt agreements, and other factors. Additionally, because we are a holding company, our ability to

pay dividends on our common stock may be limited by restrictions on the ability of our subsidiaries to pay dividends or make distributions to us, including restrictions under the terms of the agreements governing our indebtedness.

Preferred Stock

Our Amended and Restated Certificate of Incorporation authorizes our Board of Directors to issue up to 10,000,000 shares, in the aggregate, of preferred stock, par value of $0.01 in one or more series, to fix the powers, preferences and other rights of such series, and any qualifications, limitations or restrictions thereof, including the dividend rate, conversion rights, voting rights, redemption rights and liquidation preference, and to fix the number of shares to be included in any such series, without any further vote or action by our stockholders.

There were no shares of preferred stock issued or outstanding at either September 30, 2016 or December 31, 2015. At present, we have no plans to issue any preferred stock.

Employee Stock Awards

We grant stock options, restricted stock, restricted stock units and performance share units to our employees and directors under the Amended and Restated U.S. Silica Holdings, Inc. 2011 Incentive Compensation Plan. The weighted-average stock awards (in thousands) that are antidilutive and are therefore excluded from the calculation of our diluted earnings per common share are:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
Weighted-average outstanding stock options excluded	1,095	726	1,217	464
Weighted-average outstanding restricted stock awards excluded	1,493	729	1,062	598

Share Repurchase Program

We are authorized by our Board of Directors to repurchase shares of our outstanding common stock from time to time on the open market or in privately negotiated transactions. As of September 30, 2016, we are authorized to repurchase up to $50 million of our common stock through December 11, 2016. Stock repurchases, if any, will be funded using our available liquidity. The timing and amount of stock repurchases will depend on a variety of factors, including the market conditions as well as corporate and regulatory considerations. Under our share repurchase program, as of September 30, 2016, we have repurchased 706,093 shares of our common stock at an average price of $23.83 and are authorized to repurchase up to an additional $33.2 million of our common stock.

Accumulated Other Comprehensive Income

Accumulated other comprehensive income (loss) consists of fair value adjustments associated with cash flow hedges and accumulated adjustments for net experience losses and prior service cost related to employee benefit plans. The following table presents the changes in accumulated other comprehensive income (in thousands) by component during the nine months ended September 30, 2016:

	For the Nine Months Ended September 30, 2016			
	Unrealized gain/(loss) on cash flow hedges	Unrealized gain/(loss) on short-term investments	Pension and other post-retirement benefits liability	Total
Beginning Balance	$ (81)	$ 6	$ (16,096)	$ (16,171)
Other comprehensive (loss) before reclassifications	(69)	(6)	(4,387)	(4,462)
Amounts reclassed from accumulated other comprehensive income	81	—	86	167
Ending Balance	$ (69)	$ —	$ (20,397)	$ (20,466)

Amounts reclassified from accumulated other comprehensive income (loss) related to cash flow hedges category are included in interest expense in our Income Statements and amounts reclassified related to pension and other post-retirement benefits liability category are included in the computation of net periodic pension costs, respectively, at before tax amounts.

NOTE C—BUSINESS COMBINATIONS

NBI Acquisition:

On August 16, 2016, we completed the acquisition of New Birmingham, Inc. ("NBI"), the ultimate parent company of NBR Sand, LLC ("NBR"), by acquiring all of the outstanding capital stock of NBI through the merger of New Birmingham Merger Corp., a Nevada corporation and wholly owned subsidiary of the Company, with and into NBI, followed immediately by the merger of NBI with and into NBI Merger Subsidiary II, Inc., a Delaware corporation and wholly owned subsidiary of the Company, which subsequently changed its name to Tyler Silica Company (the "NBI Acquisition"). NBR is a regional sand producer located near Tyler, Texas. The acquisition of NBI increased our regional frac sand product offering in our Oil & Gas Proppants operating segment.

The preliminary consideration paid to the stockholders of NBI at the closing of the NBI Acquisition consisted of $106.6 million of cash (net of $9.0 million cash acquired), subject to customary post-closing adjustments and 2,630,513 shares of common stock. The calculation of the preliminary purchase price (in thousands, except shares) is as follows:

Cash consideration paid		$ 115,555
Number of U.S. Silica common shares delivered	2,630,513	
Multiplied by closing market price per share of U.S. Silica common stock on August 16, 2016	$ 40.51	
Total value of U.S. Silica common shares delivered		$ 106,562
Less, cash acquired		$ (9,002)
Total purchase price		$ 213,115

The following table sets forth a preliminary allocation of the purchase price to the identifiable tangible and intangible assets acquired and liabilities assumed (in thousands):

Preliminary allocation of purchase price:	
Accounts receivable	$ 2,680
Inventories	3,494
Other current assets	439
Income tax deposits	6,657
Property, plant and mine development	209,378
Identifiable intangible assets	1,600
Goodwill	82,080
Total assets acquired	306,328
Accounts payable, accrued expenses and other current liabilities	1,484
Deferred revenue	500
Notes payable	17,633
Capital lease liabilities	2,475
Asset retirement obligations	710
Deferred tax liabilities	70,411
Total liabilities assumed	93,213
Net assets acquired	$ 213,115

The acquired intangible assets and the related estimated useful lives consist of the following:

	Approximate Fair Value	Estimated Useful Life
	(in thousands)	*(in years)*
Customer relationships	$ 1,600	15

Goodwill represents the excess of the purchase price over the fair value of the underlying net assets acquired. Goodwill in this transaction is attributable to planned growth in regional frac sand markets and synergies expected to be

achieved from integrating the operations of U.S. Silica and NBI. The goodwill amount is included in our Oil & Gas Proppants segment. Both customer relationships and goodwill are not expected to be deductible for tax purposes.

We incurred $1.0 million and $1.4 million of acquisition-related charges which are included in selling, general and administrative expenses during the three and nine months ended September 30, 2016, respectively. Additionally, we incurred $0.5 million related to the inventory write-up values in cost of goods sold during the three months ended September 30, 2016. Revenue and earnings for NBI after the acquisition date are not presented as the business was integrated into our operations subsequent to the acquisition and therefore impracticable to quantify.

Sandbox Acquisition:

On August 22, 2016, we completed the purchase of all of the outstanding units of membership interest of Sandbox Enterprises, LLC, a Texas limited liability company ("Sandbox" or the “Sandbox Acquisition”). Sandbox earns revenues from providing “last mile” transportation services to companies in the oil and gas industry. Sandbox has operations in Houston, Midland/Odessa, Texas, Morgantown, West Virginia, western North Dakota, northeast of Denver, Colorado, Oklahoma City, OK and Cambridge, Ohio, where its major customers are located. By acquiring Sandbox, we are able to expand our frac sand offering directly to customers' wellhead locations.

The preliminary consideration paid includes $69.9 million of cash (net of $1.3 million cash acquired), subject to customary post-closing adjustments and 4,195,180 shares of our common stock. The calculation of preliminary purchase price (in thousands, except shares) is as follows:

Cash consideration paid		$ 71,200
Number of U.S. Silica common shares delivered	4,195,180	
Multiplied by closing market price per share of U.S. Silica common stock on August 22, 2016	$ 40.92	
Total value of U.S. Silica common shares delivered		$ 171,667
Less, cash acquired		$ (1,306)
Total purchase price		$ 241,561

The following table sets forth a preliminary allocation of the purchase price to Sandbox’s identifiable tangible and intangible assets acquired and liabilities assumed (in thousands):

Preliminary allocation of purchase price:	
Accounts receivable	$ 12,232
Prepaid expenses and other	1,482
Property, plant and mine development	32,336
Identifiable intangible assets	124,944
Goodwill	82,469
Total assets acquired	253,463
Accounts payable	4,112
Deferred revenue	4,891
Accrued expenses and other current liabilities	2,899
Total liabilities assumed	11,902
Net assets acquired	$ 241,561

The acquired intangible assets and the related estimated useful lives consist of the following:

	Approximate Fair Value	Estimated Useful Life
	(in thousands)	*(in years)*
Indefinite lived intangible assets - Trade names	$ 17,844	Indefinite
Definite lived intangible assets - Technology and intellectual property	57,700	15
Definite lived intangible asset - Customer relationships	49,400	14
Total fair value of identifiable intangible assets	$ 124,944	

Goodwill represents the excess of the purchase price over the fair value of the underlying net assets acquired. Goodwill in this transaction is attributable to expected growth in frac sand demand at the well head and synergies expected to be achieved from integrating the operations of U.S. Silica and Sandbox. The goodwill amount is included in our Oil & Gas Proppants segment. Goodwill and all intangible assets identified above are expected to be deductible for tax purposes.

Our 2016 Income Statement included revenue of $7.5 million associated with Sandbox following the date of acquisition during the three months ended September 30, 2016. Sandbox's impact on our net loss was not significant for the three months ended September 30, 2016. We incurred $2.7 million and $2.8 million of acquisition-related charges which are included in selling, general and administrative expenses on the Income Statement for the three and nine months ended September 30, 2016, respectively.

The cost related to the issuance of the 6,825,693 shares of common stock to complete the two acquisitions totaled $0.2 million, which is included in additional paid-in capital on our Condensed Consolidated Statements of Stockholders' Equity for the nine months ended September 30, 2016.

With the two above mentioned acquisitions, as of September 30, 2016, the gross carrying amount of the customer relationships intangible asset was $60.5 million with accumulated amortization of $3.8 million. As of September 30, 2016, the weighted average remaining useful life of our customer relationships was 13.7 years. The estimated annual amortization in each of the next five years is $4.1 million.

Both acquisitions were accounted for using the acquisition method of accounting. The purchase price and purchase price allocations for both acquisitions are preliminary and subject to customary post-closing adjustments and changes in the fair value of assets and liabilities. As a result, our final purchase price allocations may be significantly different than those reflected in the tables above.

Combined Pro Forma Results

The results of NBI's and Sandbox's operations have been included in the consolidated financial statements subsequent to the acquisition dates. The following unaudited pro forma consolidated financial information reflects the results of operations as if the NBI Acquisition and Sandbox Acquisition had occurred on January 1, 2015, after giving effect to certain purchase accounting adjustments. This information does not purport to be indicative of the actual results that would have occurred if the acquisition had actually been completed on the date indicated, nor is it necessarily indicative of the future operating results or the financial position of the combined company (in thousands, except per share amounts):

	Three months ended September 30,		Nine months ended September 30,	
	2016	2015	2016	2015
Sales	$ 153,358	$ 189,425	$ 433,179	$ 589,203
Net income	$ (18,111)	$ 8,703	$ (38,207)	$ 45,429
Basic earnings per share	$ (0.27)	$ 0.16	$ (0.62)	$ 0.85
Diluted earnings per share	$ (0.27)	$ 0.16	$ (0.62)	$ 0.84

NOTE D—ACCOUNTS RECEIVABLE

At September 30, 2016 and December 31, 2015, accounts receivable (in thousands) consisted of the following:

	September 30, 2016	December 31, 2015
Trade receivables	$ 77,262	$ 64,821
Less: Allowance for doubtful accounts	(7,358)	(7,686)
Net trade receivables	69,904	57,135
Other receivables	821	1,571
Total accounts receivable	$ 70,725	$ 58,706

Changes in our allowance for doubtful accounts (in thousands) during the nine months ended September 30, 2016 are as follows:

	September 30, 2016
Beginning balance	$ 7,686
Bad debt provision	(86)
Write-offs	(242)
Ending balance	$ 7,358

NOTE E—INVENTORIES

At September 30, 2016 and December 31, 2015, inventories (in thousands) consisted of the following:

	September 30, 2016	December 31, 2015
Supplies	$ 18,279	$ 18,029
Raw materials and work in process	24,750	18,113
Finished goods	34,400	28,862
Total inventories	$ 77,429	$ 65,004

NOTE F—PROPERTY, PLANT AND MINE DEVELOPMENT

At September 30, 2016 and December 31, 2015, property, plant and mine development (in thousands) consisted of the following:

	September 30, 2016	December 31, 2015
Mining property and mine development	$ 417,065	$ 222,439
Asset retirement cost	10,597	9,889
Land	35,842	30,322
Land improvements	39,959	37,791
Buildings	52,301	51,280
Machinery and equipment	444,017	360,817
Furniture and fixtures	2,554	1,917
Construction-in-progress	41,814	56,130
	1,044,149	770,585
Accumulated depletion, depreciation and amortization	(253,584)	(209,389)
Total property, plant and mine development, net	$ 790,565	$ 561,196

At September 30, 2016, the aggregate cost of the machinery and equipment acquired under capital leases was $4.3 million, reduced by accumulated depreciation of $1.7 million. The amount of interest costs capitalized in property, plant and mine development was $209 and $465 for the nine months ended September 30, 2016 and 2015, respectively.

NOTE G—DEBT AND CAPITAL LEASES

At September 30, 2016 and December 31, 2015, debt (in thousands) consisted of the following:

	September 30, 2016	December 31, 2015
Senior secured credit facility:		
Revolver expiring July 23, 2018 (5% at September 30, 2016 and December 31, 2015)	$ —	$ —
Term loan facility—final maturity July 23, 2020 (4% - 4.5% at September 30, 2016 and December 31, 2015)	495,450	499,275
Less: Unamortized original issue discount	(1,413)	(1,696)
Less: Unamortized debt issuance cost	(4,829)	(5,874)
Note payable secured by royalty interest (includes $3,053 unamortized fair value premium)	15,571	—
Customer note payable	1,852	—
Total debt	506,631	491,705
Less: current portion	(6,745)	(3,330)
Total long-term portion of debt	$ 499,886	$ 488,375

Revolving Line-of-Credit

We have a $50 million revolving line-of-credit (the “Revolver”), with zero drawn and $4.0 million allocated for letters of credit as of September 30, 2016, leaving $46.0 million available under the Revolver.

Senior Secured Credit Facility

At September 30, 2016, contractual maturities of long-term debt (in thousands) are as follows:

2016	$ 1,275
2017	5,100
2018	5,100
2019	5,100
2020	478,875
	$ 495,450

Our senior secured credit facility is secured by substantially all of our assets and a pledge of the equity interests in certain of our subsidiaries. The facility contains covenants that, among other things, govern our ability to create, incur or assume indebtedness and liens, to make acquisitions or investments, to pay dividends and to sell assets. The facility also requires us to maintain a consolidated total net leverage ratio of no more than 3.75:1.00 as of the last day of any fiscal quarter whenever usage of the Revolver (other than certain undrawn letters of credit) exceeds 25% of the Revolver commitment. As of September 30, 2016, we are in compliance with all covenants in accordance with our senior secured credit facility.

Note Payable Secured by Royalty Interest

In conjunction with our NBI Acquisition, we assumed a note payable secured by a royalty interest. The monthly royalty payment is calculated based on future tonnages and sales related to the sand shipped from our Tyler, Texas facility. The note payable is due by June 30, 2032. The note does not provide a stated interest rate. The minimum payments (in thousands) for the next five years required by the note are as follows:

2016	$ 247
2017	1,750
2018	1,750
2019	1,750
2020	1,750

Under this agreement once a certain number of tons have been shipped from the Tyler facility, the minimum payments will decrease to $0.5 million per year, subject to proration in the period this threshold is met.

The royalty note payable fair value was estimated to be $15.7 million on the acquisition date. The estimate was made using a probabilistic model which calculated the present value assuming alternative possible future cash payment scenarios. As a result, a premium of $3.1 million was added to the existing $12.6 million principal on that date. The premium is being amortized over the life of the agreement using the effective interest method and a weighted average discount rate of 2.10%.

Customer Note Payable

In connection with our NBI Acquisition, we assumed a customer note payable that was entered into by NBI. Effective January 1, 2016, NBI entered into an amendment to a supply agreement whereby the outstanding principal balance due under the initial supply agreement was reduced to $3.0 million. Terms of the amended agreement call for repayment of $2.5 million at 0% interest, in equal monthly payments beginning January 1, 2016 for 60 months. We discounted the required future cash payments using an interest rate of 3.5% and recorded the note balance at $1.9 million as of September 30, 2016. Contractual maturities of this note payable (in thousands) are as follows:

2016	$	108
2017		440
2018		456
2019		472
2020		376
Total	$	1,852

The remaining $0.5 million will be repaid in the form of product load credits. In the event the load credits do not result in full repayment of the $0.5 million by December 31, 2020, any remaining balance will be canceled. This $0.5 million is recorded on our Balance Sheet as deferred revenue as of September 30, 2016.

Capital Leases

In conjunction with our NBI Acquisition, we assumed multiple capital lease obligations that were entered into by NBI. NBI enters into these financing arrangements from time to time to purchase machinery and equipment utilized in operations. At September 30, 2016, scheduled future minimum lease payments under capital lease obligations (in thousands) are as follows:

2016	$	332
2017		1,433
2018		712
Total minimum lease payments		2,477
Less: amount representing interest		(60)
Present value of minimum lease payments		2,417
Less: current portion of capital lease obligations		(1,136)
Non-current portion of capital lease obligations	$	1,281

NOTE H—ASSET RETIREMENT OBLIGATION

Mine reclamation costs, or future remediation costs for inactive mines, are accrued based on management’s best estimate at the end of each period of the costs expected to be incurred at a site. Such cost estimates include, where applicable, ongoing care, maintenance and monitoring costs. Changes in estimates at inactive mines are reflected in earnings in the period an estimate is revised.

As of September 30, 2016, we had a liability of $13.7 million in other long-term obligations related to our asset retirement obligation. Changes in the asset retirement obligation (in thousands) during the nine months ended September 30, 2016 are as follows:

	September 30, 2016
Beginning balance	$ 12,254
Payments	—
Accretion	720
Additions due to NBI Acquisition	710
Ending balance	$ 13,684

NOTE I—FAIR VALUE ACCOUNTING

Fair value is defined as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Fair value is estimated by applying the following hierarchy, which prioritizes the inputs used to measure fair value into three levels and bases the categorization within the hierarchy upon the lowest level of input that is available and significant to the fair value measurement:

Level 1—Quoted prices in active markets for identical assets or liabilities.

Level 2—Observable inputs other than quoted prices in active markets for identical assets and liabilities, quoted prices for identical or similar assets or liabilities in inactive markets, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

Level 3—Inputs that are generally unobservable and typically reflect management’s estimate of assumptions that market participants would use in pricing the asset or liability.

Cash Equivalents

Due to the short-term maturity, we believe our cash equivalent instruments at September 30, 2016 and December 31, 2015 approximate their reported carrying values.

Short-Term Investments

In general, the fair value of our short-term investments is based on quoted prices for similar assets in active markets, or for identical assets or similar assets in markets in which there were fewer transactions (Level 2). Money market mutual funds are based on calculated net asset value and are reported in Level 1. Variable rate demand obligations underwritten and remarketed by a financial institution are priced at par value.

Long-Term Debt, Including Current Maturities

We believe that the fair values of our long-term debt, including current maturities, approximate their carrying values based on their effective interest rates compared to current market rates.

Derivative Instruments

The estimated fair value of our derivative assets (interest rate caps) are recorded at each reporting period and are based upon widely accepted valuation techniques, including discounted cash flow analysis on the expected cash flows of each derivative contract. This analysis reflects the contractual terms of the derivatives, including the period to maturity, and uses observable market-based inputs, including interest rate curves and implied volatilities. We also incorporate credit valuation adjustments to appropriately reflect both our nonperformance risk as well as that of the respective counterparty in the fair value measurements.

Although we have determined that the majority of the inputs used to value our derivatives fall within Level 2 of the fair value hierarchy, the credit valuation adjustments associated with our derivatives utilize Level 3 inputs, such as estimates of current credit spreads to evaluate the likelihood of default of ourselves and our counterparties. However, as of September 30, 2016, we have assessed that the impact of the credit valuation adjustments on the overall valuation of our derivative positions is not significant. As a result, we have determined that our derivative valuations in their entirety are classified in Level 2 of the fair value hierarchy.

In accordance with the fair value hierarchy, the following table presents the fair value as of September 30, 2016 of those assets that we measure at fair value on a recurring basis:

	Level 1	Level 2	Total
Interest rate derivatives	$ —	$ 12	$ 12
Net asset	$ —	$ 12	$ 12

NOTE J—COMMITMENTS AND CONTINGENCIES

Future Minimum Annual Commitments at September 30, 2016:

	Operating Leases	Minimum Purchase Commitments
2016	$ 12,451	$ 7,413
2017	51,524	17,944
2018	59,791	14,693
2019	53,218	11,790
2020	48,612	6,369
Thereafter	157,414	17,136
Total future lease and purchase commitments	$ 383,010	$ 75,345

Operating Leases

We are obligated under certain operating leases for railroad cars, office space, mining property, mining/processing equipment and transportation and other equipment. Certain operating lease agreements include options to purchase the equipment for fair market value at the end of the original lease term. In general, the above leases include renewal options and provide that we pay for all utilities, insurance, taxes and maintenance. Expense related to operating leases and rental agreements totaled approximately $12.6 million and $13.2 million for the three months ended September 30, 2016 and 2015, respectively, and $37.7 million and $34.9 million for the nine months ended September 30, 2016 and 2015, respectively.

Minimum Purchase Commitments

We enter into service agreements with our transload service providers and transportation service providers. Some of these agreements require us to purchase a minimum amount of services over a specific period of time. Any inability to meet these minimum contract requirements requires us to pay a shortfall fee, which is based on the difference between the minimum amount contracted for and the actual amount purchased.

Other Commitments and Contingencies

Our operating subsidiary, U.S. Silica Company (“U.S. Silica”), has been named as a defendant in various product liability claims alleging silica exposure causing silicosis. During the nine months ended September 30, 2016, one new claim was brought against U.S. Silica. As of September 30, 2016, there were 74 active silica-related products liability claims pending in which U.S. Silica is a defendant. Although the outcomes of these claims cannot be predicted with certainty, in the opinion of management, it is not reasonably possible that the ultimate resolution of these matters will have a material adverse effect on our financial position or results of operations that exceeds the accrual amounts.

We have recorded estimated liabilities for these claims in other long-term obligations as well as estimated recoveries under the indemnity agreement and an estimate of future recoveries under insurance in other assets on our consolidated balance sheets. As of both September 30, 2016, and December 31, 2015 other non-current assets included $0.3 million for insurance for third-party products liability claims and other long-term obligations included $1.3 million in third-party products claims liability.

Additionally, during the three months ended March 31, 2015, we received an unfavorable ruling in an arbitration proceeding as a result of exiting a toll manufacturing contract. The amount of the ruling was approximately $7.6 million. The matter was settled and the settlement amount of $6.5 million was paid on June 9, 2015, which was included in selling, general and administrative expense in our Income Statement for the nine months ended September 30, 2015.

NOTE K—INCOME TAXES

For interim period reporting, we record income taxes using an estimated annual effective tax rate based upon projected annual income, forecasted permanent tax differences, discrete items and statutory rates in states in which we operate. At the end of each interim period, we update the estimated annual effective tax rate, and if the estimated tax rate changes based on new information, we make a cumulative adjustment in the period. We record the tax effect of an unusual or infrequently occurring item in the interim period in which it occurs as a discrete item of tax.

In the nine months ended September 30, 2016, we recorded a discrete tax benefit of $2.1 million, which primarily relates to the early adoption of ASU 2016-09, as discussed in Note A - Summary of Significant Accounting Policies.

The effective tax rate was 47% and (39)% for the nine months ended September 30, 2016 and 2015, respectively. The tax rate for the nine months ended September 30, 2016 would have been 44% without the discrete tax benefit.

Historically, our actual effective tax rates have differed from the statutory effective rate primarily due to the benefit received from statutory percentage depletion allowances. The deduction for statutory percentage depletion does not necessarily change proportionately to changes in income before income taxes.

NOTE L—PENSION AND POST-RETIREMENT BENEFITS

We maintain a single-employer noncontributory defined benefit pension plan covering certain employees. Net pension benefit cost (in thousands) recognized for the three and nine months ended September 30, 2016 and 2015 are as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
Service cost	$ 267	$ 324	$ 559	$ 971
Interest cost	1,009	1,203	2,257	3,610
Expected return on plan assets	(1,361)	(1,375)	(2,768)	(4,124)
Net amortization and deferral	395	666	884	1,999
Net pension benefit costs	$ 310	$ 818	$ 932	$ 2,456

In addition, we provide defined benefit post-retirement health care and life insurance benefits to some employees. Net periodic post-retirement benefit cost recognized for the three and nine months ended September 30, 2016 and 2015 are as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
Service cost	$ (28)	$ 36	$ 60	$ 124
Interest cost	(187)	221	425	776
Expected return on plan assets	—	—	—	(2)
Special termination benefit	—	47	21	47
Net amortization and deferral	—	58	270	250
Net post-retirement costs	$ (215)	$ 362	$ 776	$ 1,195

The weighted average discount rate used to determine the projected pension and post-retirement obligations was updated during the six months ended September 30, 2016, and was decreased from 4.5% at December 31, 2015 to 3.8% at September 30, 2016. We made no contributions to the qualified pension plan for the three and nine months ended September 30, 2016. We contributed $1.8 million and $2.0 million to the qualified pension plan for the three and nine months ended September 30, 2015, respectively. Total expected employer funding contributions during the fiscal year ending December 31, 2016 are $0 for the pension plan and $1.0 million for the post-retirement medical and life plan.

NOTE M— OBLIGATIONS UNDER GUARANTEES

We have indemnified Travelers Casualty and Surety Company of America (“Travelers”) against any loss Travelers may incur in the event that holders of surety bonds, issued on behalf of us by Travelers, execute the bonds. As of September 30, 2016, Travelers had $10.5 million in bonds outstanding for us. The majority of these bonds, $10.1 million, relate to reclamation requirements issued by various governmental authorities. Reclamation bonds remain outstanding until the mining area is reclaimed and the authority issues a formal release. The remaining bonds relate to such indefinite purposes as licenses, permits, and tax collection.

NOTE N— SEGMENT REPORTING

Our business is organized into two reportable segments, Oil & Gas Proppants and Industrial & Specialty Products, based on end markets. The reportable segments are consistent with how management views the markets that we serve and the financial information reviewed by the chief operating decision maker. We manage our Oil & Gas Proppants and Industrial & Specialty Products businesses as components of an enterprise for which separate information is available and is evaluated regularly by the chief operating decision maker in deciding how to allocate resources and assess performance.

In the Oil & Gas Proppants segment, we serve the oil and gas recovery market primarily by providing fracturing sand, or “frac sand,” which is pumped down oil and natural gas wells to prop open rock fissures and increase the flow rate of oil and natural gas from the wells.

The Industrial & Specialty Products segment consists of over 210 products and materials used in a variety of industries, including container glass, fiberglass, specialty glass, flat glass, building products, fillers and extenders, foundry products, chemicals, recreation products and filtration products.

An operating segment’s performance is primarily evaluated based on segment contribution margin, which excludes certain corporate costs not associated with the operations of the segment. These corporate costs are separately stated below and include costs that are related to functional areas such as operations management, corporate purchasing, accounting, treasury, information technology, legal and human resources. We believe that segment contribution

margin, as defined above, is an appropriate measure for evaluating the operating performance of our segments. However, this measure should be considered in addition to, not a substitute for, or superior to, net income (loss) or other measures of financial performance prepared in accordance with generally accepted accounting principles. The other accounting policies of each of the two reporting segments are the same as those in Note A - Summary of Significant Accounting Policies of our Financial Statements.

The following table presents sales and segment contribution margin (in thousands) for the reporting segments and other operating results not allocated to the reported segments for the three and nine months ended September 30, 2016 and 2015:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
Sales:				
Oil & Gas Proppants	$ 86,782	$ 101,987	$ 225,573	$ 341,593
Industrial & Specialty Products	50,966	53,421	151,679	165,284
Total Sales	137,748	155,408	377,252	506,877
Segment contribution margin:				
Oil & Gas Proppants	(1,897)	16,521	(7,041)	81,972
Industrial & Specialty Products	21,587	19,967	59,967	54,953
Total segment contribution margin	19,690	36,488	52,926	136,925
Operating activities excluded from segment cost of goods sold	(1,368)	(3,679)	(4,558)	(8,500)
Selling, general and administrative	(18,472)	(13,559)	(48,560)	(47,095)
Depreciation, depletion and amortization	(17,175)	(15,158)	(46,940)	(42,096)
Interest expense	(6,684)	(6,684)	(19,974)	(20,448)
Other income, net, including interest income	493	309	2,891	818
Income tax benefit	12,177	4,695	30,102	7,584
Net income (loss)	$ (11,339)	$ 2,412	$ (34,113)	$ 27,188

Asset information, including capital expenditures and depreciation, depletion, and amortization, by segment is not included in reports used by management in its monitoring of performance and, therefore, is not reported by segment. Goodwill of $233.2 million has been allocated to these segments with $212.5 million assigned to Oil & Gas Proppants and $20.7 million to Industrial & Specialty Products as of September 30, 2016. Goodwill assigned to Oil & Gas Proppants segment increased by $164.5 million compared to $68.6 million as of December 31, 2015 due to the acquisitions discussed in Note C - Business Combinations.

NOTE O— SUBSEQUENT EVENTS

On October 4, 2016, we paid a cash dividend of $0.0625 per share to common stockholders of record on September 15, 2016, which had been declared by our Board of Directors on July 21, 2016.

On November 3, 2016, our Board of Directors declared a quarterly cash dividend of $0.0625 per share to common stockholders of record at the close of business on December 15, 2016, payable on January 5, 2017.

Also on November 3, 2016, our Board of Directors extended our $50 million stock repurchase program through December 11, 2017. This program had been scheduled to expire on December 11, 2016.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis of our financial condition and results of operations should be read together with the Condensed Consolidated Financial Statements and the accompanying notes included in Part I, Item 1 of this Quarterly Report on Form 10-Q as well as the Consolidated Financial Statements, the accompanying notes and the related Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A"), contained in our Annual Report on Form 10-K for the fiscal year ended December 31, 2015 (the "2015 Annual Report").

Overview

We are one of the largest domestic producers of commercial silica, a specialized mineral that is a critical input into a variety of attractive end markets. During our 116-year history, we have developed core competencies in mining, processing, logistics and materials science that enable us to produce and cost-effectively deliver 235 products to customers across these markets. After our acquisition of New Birmingham, Inc. ("NBI" or the "NBI Acquisition") on August 16, 2016, as of September 30, 2016, we operate 18 production facilities across the United States and own one of the largest frac sand processing plants in the United States. Including the purchase of reserves adjacent to our Ottawa, Illinois, facility in May 2016, we now control 471 million tons of reserves of commercial silica, 278 million tons of which can be processed to meet American Petroleum Institute (API) frac sand size specifications. Additionally, on August 22, 2016, we completed the acquisition of Sandbox Enterprises, LLC ("Sandbox" or the "Sandbox Acquisition") as a "last mile" logistics solution for frac sand in the oil and gas industry. See more information regarding NBI Acquisition and Sandbox Acquisition at Note C - Business Combinations to our Financial Statements in Part 1, Item 1 of this Quarterly Report on Form 10-Q.

Our operations are organized into two segments based on end markets served: (1) Oil & Gas Proppants and (2) Industrial & Specialty Products. Our segments are complementary because our ability to sell to a wide range of customers across end markets allows us to maximize recovery rates in our mining operations, optimize our asset utilization and reduce the cyclicality of our earnings.

Recent Trends and Outlook

Oil and gas proppants end market trends

Increased demand for frac sand between 2008 and 2014 was driven by the growth in the use of hydraulic fracturing as a means to extract hydrocarbons from shale formations. According to the 2014 Proppant Market Report, PropTester Inc., published February 2015, global frac sand consumption grew at a 51.2% compound annual growth rate from 2009 to 2014. This included 53.7% growth in frac sand demand from 2013 to 2014. We significantly expanded our sales efforts to the frac sand market in 2008 and experienced rapid growth in our sales associated with our oil and gas activities from 2008 until 2014.

However, declines in oil prices in 2015 have reduced oil and gas drilling and completion activity in North America. As of September 30, 2016, the U.S. land rig count had fallen over 70% from its peak in 2014. Demand for frac sand fell in conjunction with the rig count and activity levels, partially offset by higher proppant per well to optimize recovery and production rates. Frac sand pricing remained under pressure during the nine months ended September 30, 2016. The table below summarizes some revenue metrics of our Oil & Gas Proppants segment for the three months ended September 30, 2016, June 30, 2016, March 31, 2016, and December 31, 2015. During the three months ended June 30, 2016 and March 31, 2016 both tons sold and average selling price decreased sequentially due to reduced demand from our customers. During the three months ended September 30, 2016, both tons sold and average selling price per ton increased. Leading indicators suggested a possibility of stabilization or even an increase in North American oil and gas drilling and completion activity in the near future.

Dollars in thousands except per ton data	Three Months Ended				Percentage Change for Three Months Ended		
Oil & Gas Proppants	**September 30, 2016**	**June 30, 2016**	**March 31, 2016**	**December 31, 2015**	**September 30, 2016 vs. June 30, 2016**	**June 30, 2016 vs. March 31, 2016**	**March 31, 2016 vs. December 31, 2015**
Sales	$ 86,782	$ 64,926	$ 73,865	$ 88,841	34%	(12)%	(17)%
Tons Sold	1,617	1,333	1,411	1,553	21%	(6)%	(9)%
Average Selling Price per Ton	$ 53.67	$ 48.71	$ 52.35	$ 57.21	10%	(7)%	(8)%

However, if reduction in oil and gas drilling and completion activity continues, it may reduce frac sand demand further, which could result in us selling fewer tons, selling tons at lower prices, or both. If we sell less frac sand, or sell frac sand at lower prices, our revenue, net income, cash generated from operating activities, and liquidity would be adversely affected. We could evaluate further actions to reduce cost and improve liquidity. For instance, depending on market conditions, we may implement additional cost improvement projects or further reduce our capital spending for 2016 and beyond and may delay or cancel capital projects.

Additionally, due to impacts of change in demand for our frac sand, we are engaged in ongoing discussions with our take-or-pay supply agreement customers regarding pricing and volume requirements under our existing contracts. While these discussions continue, in certain circumstances, we have provided contract customers with temporary reductions to contract pricing in exchange for additional term and/or volume in order to preserve the value of these agreements. We may deliver sand at prices or at volumes below the requirements in our existing take-or-pay supply agreements. We expect these circumstances may continue for the remainder of 2016 and potentially into 2017. For a discussion of customer credit risk, see the Credit Risk section in Part I, Item 3 of this Quarterly Report on Form 10-Q.

We believe fluctuations in frac sand demand and price may occur as the market adjusts to changing supply and demand due to energy pricing fluctuations. We continue to expect long-term growth in oil and gas drilling in North American shale basins.

Oil and natural gas exploration and production companies' and oilfield service providers’ preferences and expectations have been evolving in recent years. A proppant vendor’s logistics capabilities have become an important differentiating factor when competing for business on both a spot and contract basis. Many of our customers increasingly seek convenient in-basin and wellhead proppant delivery capability from their proppant supplier. We believe that, over time, proppant customers will prefer to consolidate their purchases across a smaller group of suppliers with robust logistics capabilities and a broad offering of high performance proppants.

Industrial and specialty products end market trends

Demand in the industrial and specialty products end markets is relatively stable and is primarily influenced by key macroeconomic drivers such as housing starts, light vehicle sales, repair and remodel activity and industrial production. The primary end markets served by our production used in Industrial & Specialty Products are foundry, building products, sports and recreation, glassmaking and filtration. We have been increasing our value-added product offerings in the industrial and specialty products end markets. These new higher margin product sales have increased our Industrial & Specialty Products segment's profitability.

Our Strategy

The key drivers of our growth strategy include:

- ***Expand our Oil & Gas Proppants production capacity and product portfolio.*** We continue to consider and execute several initiatives to increase our frac sand production capacity and augment our proppant product portfolio.
    - While we made various initial investments or initial evaluations of new Greenfield sites in recent years, these expansion projects have been given lower priority due to the current frac sand market conditions. Our current focus for expanding production capacity is on maximizing existing production facility efficiencies.
    - In order to increase our resin coated product portfolio, during 2015, we announced the introduction of InnoProp® Python RCS, a new high-performance resin coated proppant designed to increase the production of oil and gas wells in an economical and efficient manner. In early 2016, we introduced another new resin coated product, InnoProp® PLT, which is a curable low-temperature product and can be used without an activator in oil and gas wells that have bottom-hole static temperatures down to 70°F.
- ***Increase our presence and product offering in industrial and specialty products end markets.*** Our research and business development teams work in tandem with our customers to develop new products, which we expect will either increase our presence and market share in certain industrial and specialty products end markets or allow us to enter new markets. We manage a robust pipeline of new products in various stages of development. Some of these products have already come to market, resulting in a positive impact on our financial results. We continue to work toward offering more value-driven industrial and specialty products that will enhance the profitability of the business.
- ***Optimize product mix and further develop value-added capabilities to maximize margins.*** We continue to actively manage our product mix at each of our plants to ensure we maximize our profit margins. This requires us to use our proprietary expertise in balancing key variables, such as mine geology, processing capacities, transportation

availability, customer requirements and pricing. We expect to continue investing in ways to increase the value we provide to our customers by expanding our product offerings, improving our supply chain management, upgrading our information technology, and creating a world class customer service model.

- ***Expand our supply chain network and leverage our logistics capabilities to meet our customers' needs in each strategic oil and gas basin.*** We continue to expand our transload network to ensure product is available to meet the in-basin needs of our customers. This approach allows us to provide strong customer service and puts us in a position to take advantage of opportunistic spot market sales. Our plant sites are strategically located to provide access to key Class I railroads, which enables us to cost effectively send product to each of the strategic basins in North America. We can ship product by truck, barge and rail with an ability to connect to short-line railroads as necessary to meet our customers' evolving in-basin product needs. We believe that our supply chain network and logistics capabilities are a competitive advantage that enables us to provide superior service for our customers. For example, in 2015, we opened our Odessa, Texas unit train receiving transload facility, which was built in partnership with Union Pacific Railroad to support mainly the Permian market. We expect to continue to make strategic investments and develop partnerships with transload operators and transportation providers that will enhance our portfolio of supply chain services that we can provide to customers. As of September 30, 2016, we have storage capacity at 53 transloads located near all of the major shale basins in the United States. Our recent acquisition of Sandbox extends our delivery capability directly to our customers' wellhead locations, which increases efficiency and provides a lower cost logistics solution for our customers. Sandbox has operations in Houston, Midland/Odessa, Texas, Morgantown, West Virginia, western North Dakota, northeast of Denver, Colorado, Oklahoma City, OK and Cambridge, Ohio, where its major customers are located.
- ***Evaluate both Greenfield and Brownfield expansion opportunities and other acquisitions.*** We expect to continue to leverage our reputation, processing capabilities and infrastructure to increase production, as well as explore other opportunities to expand our reserve base. We may accomplish this by developing Greenfield projects, where we can capitalize on our technical knowledge of geology, mining and processing and our strong reputation within local communities. We are continuing to actively pursue acquisitions to grow by taking advantage of our asset footprint, our management's experience with high-growth businesses, and our strong customer relationships. Our primary objective is to acquire assets with differing levels of frac sand quality that are complementary to our Oil & Gas Proppants segment, with a focus on mining, processing and logistics to further enhance our market presence. We prioritize acquisitions that provide opportunities to realize synergies (and, in some cases, the acquisition may be immediately accretive assuming synergies), including entering new geographic and frac sand product markets, acquiring attractive customer contracts and improving operations. For instance, on August 16, 2016, we completed our acquisition of NBI, the ultimate parent company of, NBR Sand, LLC, a regional sand producer located near Tyler, Texas. Additionally, on August 22, 2016, we completed the acquisition of Sandbox, a provider of logistics solutions and technology for the transportation of proppant used in hydraulic fracturing in the oil and gas industry. We are in active discussions to acquire additional assets fitting this strategy, which, if completed, would be "significant" under Regulation S-X and could require additional sources of financing. There can be no assurance that we will reach a definitive agreement and complete any of these potential transactions. See the risk factors disclosed in Item 1A of Part I of our 2015 Annual Report, including the risk factor entitled, "If we cannot successfully complete acquisitions or integrate acquired businesses, our growth may be limited and our financial condition may be adversely affected."
- ***Maintain financial strength and flexibility***. We intend to maintain financial strength and flexibility to enable us to better manage through the oil and gas proppant industry downturn and pursue acquisitions and new growth opportunities as they arise. In March 2016, we completed a public offering of 10,000,000 shares of our common stock for total cash proceeds of approximately $186.2 million net of underwriting discounts and offering costs. As of September 30, 2016, we had $264.1 million of cash on hand and $46.0 million of availability under our Revolver.

How We Generate Our Sales

We derive our sales primarily by mining and processing minerals that our customers purchase for various uses. Our sales are primarily a function of the price per ton and the number of tons sold. The price invoiced reflects product, transportation and additional services as applicable, such as storage and transloading the product from railcars to trucks for delivery to the customer site. We invoice the majority of our customers on a per shipment basis, although for some larger customers, we consolidate invoices weekly or monthly. Our five largest customers accounted for approximately 38% of total sales during the nine months ended September 30, 2016. Sales to our largest customer, Halliburton Company, accounted for 13% of our total revenues during the nine months ended September 30, 2016. No other customer accounted for 10% or more of our total revenues.

We primarily sell our products under short-term price agreements or at prevailing market rates. For a number of customers, we sell under long-term, competitively-bid contracts. As of September 30, 2016, we have seven take-or-pay supply agreements in the Oil & Gas Proppants segment with initial terms expiring between 2017 and 2019. These agreements define, among other commitments, the volume of product that our customers must purchase, the volume of product that we must provide and the price that we will charge and that our customers will pay for each product. Prices under these agreements are generally fixed and subject to upward adjustment in response to certain cost increases. Additionally, at the time the take-or-pay supply agreements were signed, some customers provided advance payments for future shipments. A percentage of these advance payments is recognized as revenue with each ton of applicable product shipped to the customer. Collectively, sales to customers with take-or-pay supply agreements accounted for 21% and 32% of our total company revenue during the nine months ended September 30, 2016 and 2015, respectively. Although sales under take-or-pay supply agreements may result in us realizing lower margins than we otherwise might during periods of high market prices, we believe such lower margins are offset by the benefits derived from the product mix and sales volume stability afforded by such supply agreements, which helps us lower market risk arising from adverse changes in spot prices and market conditions. Additionally, selling more tons under supply contracts also enables us to be more efficient from a production, supply chain and logistics standpoint. As discussed in Part I, Item 1A., "Risk Factors", of our 2015 Annual Report—"A large portion of our sales is generated by our top customers, and the loss of, or significant reduction in, purchases by our largest customers could adversely affect our operations," these customers may not continue to purchase the same levels of product in the future due to a variety of reasons, contract requirements notwithstanding.

Historically we have not entered into long term take-or-pay contracts with our customers in the industrial and specialty products end markets because of the high cost to our customers of switching providers. With these customers, we often enter into price agreements which are typically negotiated annually.

The Costs of Conducting Our Business

The principal expenses involved in conducting our business are labor costs, electricity and drying fuel costs, maintenance and repair costs for our mining and processing equipment and facilities and transportation costs. Transportation and related costs include freight charges, fuel surcharges, transloading fees, switching fees, railcar lease costs, demurrage costs, storage fees and labor costs. We believe the majority of our operating costs are relatively stable in price, but can vary significantly based on the volume of product produced. We benefit from owning the majority of the mineral deposits that we mine and having long-term mineral rights leases or supply agreements for our other primary sources of raw material, which limit royalty payments.

Additionally, we incur expenses related to our corporate operations, including costs for sales and marketing; research and development; and finance, legal, environmental, health and safety functions of our organization. These costs are principally driven by personnel expenses.

How We Evaluate Our Business

Our management team evaluates our business using a variety of financial and operational metrics. Our business is organized into two segments, Oil & Gas Proppants and Industrial & Specialty Products. We evaluate the performance of these segments based on their tons sold, average selling price and contribution margin earned. Additionally, we consider a number of factors in evaluating the performance of the business as a whole, including total tons sold, average selling price, segment contribution margin, and Adjusted EBITDA. We view these metrics as important factors in evaluating our profitability and review these measurements frequently to analyze trends and make decisions.

Segment Contribution Margin

Segment contribution margin, a non-GAAP measure, is a key metric that management uses to evaluate our operating performance and to determine resource allocation between segments. Segment contribution margin excludes certain corporate costs not associated with the operations of the segment. These unallocated costs include costs that are related to corporate functional areas such as operations management, corporate purchasing, accounting, treasury, information technology, legal and human resources.

Segment contribution margin is not a measure of our financial performance under GAAP and should not be considered an alternative to measures derived in accordance with GAAP. For more details on the reconciliation of segment contribution margin to its most directly comparable GAAP financial measure, net income (loss), see Note N - Segment Reporting to our Financial Statements in Part I, Item 1 of this Quarterly Report on Form 10-Q.

Adjusted EBITDA

Adjusted EBITDA, a non-GAAP measure, is included in this report because it is a key metric used by management to assess our operating performance and by our lenders to evaluate our covenant compliance. Adjusted EBITDA excludes certain income and/or costs, the removal of which improves comparability of operating results across reporting periods. Our target performance goals under our incentive compensation plan are tied, in part, to our Adjusted EBITDA. In addition, our Revolver contains a consolidated total net leverage ratio that we must meet as of the last day of any fiscal quarter whenever usage of the Revolver (other than certain undrawn letters of credit) exceeds 25% of the Revolver commitment, which is calculated based on our Adjusted EBITDA. Noncompliance with the financial ratio covenant contained in the Revolver could result in the acceleration of our obligations to repay all amounts outstanding under the Revolver and the Term Loan. Moreover, the Revolver and the Term Loan contain covenants that restrict, subject to certain exceptions, our ability to make permitted acquisitions, incur additional indebtedness, make restricted payments (including dividends) and retain excess cash flow based, in some cases, on our ability to meet leverage ratios calculated based on our Adjusted EBITDA.

Adjusted EBITDA is not a measure of our financial performance or liquidity under GAAP and should not be considered as an alternative to net income as a measure of operating performance, cash flows from operating activities as a measure of liquidity or any other performance measure derived in accordance with GAAP. Additionally, Adjusted EBITDA is not intended to be a measure of free cash flow for management's discretionary use, as it does not consider certain cash requirements such as interest payments, tax payments and debt service requirements. Adjusted EBITDA contains certain other limitations, including the failure to reflect our cash expenditures, cash requirements for working capital needs and cash costs to replace assets being depreciated and amortized, and excludes certain non-recurring charges. Management compensates for these limitations by relying primarily on our GAAP results and by using Adjusted EBITDA only supplementally. Our measure of Adjusted EBITDA is not necessarily comparable to other similarly titled captions of other companies due to potential inconsistencies in the methods of calculation.

The following table sets forth a reconciliation of net income, the most directly comparable GAAP financial measure, to Adjusted EBITDA.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
Net income (loss)	$ (11,339)	$ 2,412	$ (34,113)	$ 27,188
Total interest expense, net of interest income	6,211	6,485	18,731	19,961
Provision for taxes	(12,177)	(4,695)	(30,102)	(7,584)
Total depreciation, depletion and amortization expenses	17,175	15,158	46,940	42,096
EBITDA	(130)	19,360	1,456	81,661
Non-cash incentive compensation [1]	3,720	1,913	9,075	1,824
Post-employment expenses (excluding service costs) [2]	(184)	765	780	2,501
Business development related expenses [3]	4,667	390	5,635	8,343
Other adjustments allowable under our existing credit agreement [4]	185	1,577	1,937	4,402
Adjusted EBITDA	$ 8,258	$ 24,005	$ 18,883	$ 98,731

(1) Reflects equity-based compensation expense.

(2) Includes net pension cost and net post-retirement cost relating to pension and other post-retirement benefit obligations during the applicable period, but in each case excluding the service cost relating to benefits earned during such period. See Note L - Pension and Post-retirement Benefits to our Financial Statements in Part 1, Item 1 of this Quarterly Report on Form 10-Q.

(3) Reflects expenses related to business development activities in connection with our growth and expansion initiatives, including acquisition-related costs for our NBI Acquisition and Sandbox Acquisition completed in August 2016.

(4) Reflects miscellaneous adjustments permitted under our existing credit agreement, including such items as restructuring costs for actions that will provide future cost savings. Restructuring costs were $0.0 million and $0.5 million, respectively, for the three months ended September 30, 2016 and 2015 and $3.3 million and $2.7 million, respectively, for the nine months ended September 30, 2016 and 2015. The nine months ended September 30, 2016 amount includes a gain on insurance settlement of $1.5 million received during the three months ended March 31, 2016.

Results of Operations for the Three Months Ended September 30, 2016 and 2015

Sales

All numbers in thousands except per ton data	Three Months Ended September 30,		Amount Change	Percent Change
	2016	2015	'16 vs. '15	'16 vs. '15
Sales:				
Oil & Gas Proppants	$ 86,782	$ 101,987	$ (15,205)	(15)%
Industrial & Specialty Products	50,966	53,421	(2,455)	(5)%
Total Sales	$ 137,748	$ 155,408	$ (17,660)	(11)%
Tons:				
Oil & Gas Proppants	1,617	1,616	1	— %
Industrial & Specialty Products	876	1,007	(131)	(13)%
Total Tons	2,493	2,623	(130)	(5)%
Average Selling Price per Ton:				
Oil & Gas Proppants	$ 53.67	$ 63.11	$ (9.44)	(15)%
Industrial & Specialty Products	58.18	53.05	5.13	10 %
Overall Average Selling Price per Ton:	$ 55.25	$ 59.25	$ (4.00)	(7)%

Total sales decreased 11% for the three months ended September 30, 2016 compared to the three months ended September 30, 2015, driven by a 5% decrease in total tons sold and a 7% decrease in overall average selling price. Tons sold in-basin represented 42% and 37% of total company tons sold for the three months ended September 30, 2016 and 2015, respectively.

The decrease in total sales was primarily driven by Oil & Gas Proppants sales, which decreased 15%. Oil & Gas Proppants average selling price decreased 15% driven by a year over year decrease in demand for our frac sand from customers due to reduced drilling and completion activity partially offset by increased tons sold through transload sites as a percentage of total tons sold. Tons sold for the three months ended September 30, 2016 remained flat due to decrease in demand offset by our market share gain efforts and impacts from our newly acquired businesses.

Industrial & Specialty Products sales decreased by 5% for the three months ended September 30, 2016 compared to the three months ended September 30, 2015. Tons sold decreased 13% driven by our strategic shift among customers and products. Average selling price increased 10%, which was primarily a result of new higher-margin product sales and price increases.

Cost of Goods Sold

Cost of goods sold decreased by $3.2 million, or 3%, to $119.4 million for the three months ended September 30, 2016 compared to $122.6 million for the three months ended September 30, 2015. As a percentage of sales, cost of goods sold increased to 87% for the three months ended September 30, 2016 compared to 79% for the same period in 2015. These changes result from the main components of cost of goods sold as discussed below.

We incurred $64.7 million and $68.0 million of transportation and related costs for the three months ended September 30, 2016 and 2015, respectively. This decrease was due to our transportation and logistics cost improvement efforts. As a percentage of sales, transportation and related costs increased to 47% for the three months ended September 30, 2016 compared to 44% for the same period in 2015 mainly due to a lower average selling price.

We incurred $20.8 million and $19.5 million of operating labor costs for the three months ended September 30, 2016 and 2015, respectively. The $1.3 million increase in labor costs incurred was primarily due to incremental costs related to NBI and Sandbox operations. As a percentage of sales, operating labor costs represented 15% for the three months ended September 30, 2016 compared to 13% for the same period in 2015.

We incurred $6.3 million and $7.1 million of electricity and drying fuel (principally natural gas) costs for the three months ended September 30, 2016 and 2015, respectively. The $0.8 million decrease in electricity and drying fuel costs incurred was mainly driven by fewer tons dried and our cost improvement efforts. As a percentage of sales, electricity and drying fuel costs represented 5% for both the three months ended September 30, 2016 and the same period in 2015.

We incurred $8.5 million and $9.5 million of maintenance and repair costs for the three months ended September 30, 2016 and 2015, respectively. The decrease in maintenance and repair costs incurred was mainly due to cost improvement efforts. As a percentage of sales, maintenance and repair costs represented 6% for the three months ended September 30, 2016 and the same period in 2015.

Segment Contribution Margin

Oil & Gas Proppants contribution margin decreased by $18.4 million, or 111%, to $(1.9) million for the three months ended September 30, 2016 compared to $16.5 million for the three months ended September 30, 2015, driven by a $15.2 million decrease in segment revenue, partially offset by lower segment cost of goods sold mainly due to lower transportation and related costs.

Industrial & Specialty Products contribution margin increased by $1.6 million, or 8%, to $21.6 million for the three months ended September 30, 2016 compared to $20.0 million for the three months ended September 30, 2015, driven by increased higher-margin products sales as a percentage of total sales.

Selling, General and Administrative Expenses

Selling, general and administrative expenses increased by $4.9 million, or 36%, to $18.5 million for the three months ended September 30, 2016 compared to $13.6 million for the three months ended September 30, 2015. The increase was due to the following factors:

- Business development related expense increased by $4.3 million to $4.7 million for the three months ended September 30, 2016 compared to $0.4 million for the three months ended September 30, 2015. The increase was primarily due to acquisition-related costs for NBI and Sandbox acquisitions completed in August 2016.
- Compensation-related expense increased by $1.5 million for the three months ended September 30, 2016 compared to the three months ended September 30, 2015, mainly driven by increased equity-based compensation and our NBI and Sandbox acquisitions, partially offset by the impacts of prior reductions in workforce.
- Bad debt expense decreased by $1.0 million for the three months ended September 30, 2016 compared to the three months ended September 30, 2015, mainly due to our credit collection efforts and improved market outlook.

In total, our selling, general and administrative costs represented approximately 13% and 9% of our sales for the three months ended September 30, 2016 and 2015, respectively.

Depreciation, Depletion and Amortization

Depreciation, depletion and amortization expense increased by $2.0 million, or 13%, to $17.2 million for the three months ended September 30, 2016 compared to $15.2 million for the three months ended September 30, 2015. The year over year increase was mainly driven by additional costs related to assets acquired in conjunction with our NBI and Sandbox acquisitions as well as other continued capital spending. Depreciation, depletion and amortization costs represented approximately 12% and 10% of our sales for the three months ended September 30, 2016 and 2015, respectively.

Operating Income (Loss)

Operating income decreased by $21.4 million, or 523%, to $(17.3) million for the three months ended September 30, 2016 compared to $4.1 million for the three months ended September 30, 2015. The decrease was due to an 11% decrease in sales, a 36% increase in selling, general and administrative expense and an 13% increase in depreciation, depletion and amortization expense, partially offset by a 3% decrease in cost of goods sold.

Interest Expense

Interest expense remained flat at $6.7 million for both the three months ended September 30, 2016 and the three months ended September 30, 2015, mainly due to decreases in our senior debt principal and deferred revenue offset by additional long term liabilities assumed in conjunction with our NBI and Sandbox acquisitions.

Provision for Income Taxes

The income tax benefit increased $7.5 million to $12.2 million for the three months ended September 30, 2016 compared to $4.7 million for the three months ended September 30, 2015. The increase was driven primarily by a greater loss before income taxes and the discrete tax benefit due to the early adoption of ASU 2016-09 discussed in Note A - Summary of Significant Accounting Policies of our Financial Statements. The effective tax rate was 52% and 206% for the three months ended September 30, 2016 and 2015, respectively. See accompanying Note K - Income Taxes of our Financial Statements for more information.

Historically, our actual effective tax rates have differed from the statutory effective rate primarily due to the benefit received from statutory percentage depletion allowances. The deduction for statutory percentage depletion does not necessarily change proportionately to changes in income before income taxes.

Other income, net, including interest income

Other income was relatively flat at $0.5 million and $0.3 million for the three months ended September 30, 2016 and 2015, respectively.

Net Income/Loss

Net loss was $11.3 million for the three months ended September 30, 2016 compared to a net income of $2.4 million for the three months ended September 30, 2015. The year over year decrease was due to the factors noted above.

Results of Operations for the Nine Months Ended September 30, 2016 and 2015

Sales

All numbers in thousands except per ton data	Nine Months Ended September 30,		Amount Change	Percent Change
	2016	2015	'16 vs. '15	'16 vs. '15
Sales:				
Oil & Gas Proppants	$ 225,573	$ 341,593	$ (116,020)	(34)%
Industrial & Specialty Products	151,679	165,284	(13,605)	(8)%
Total Sales	$ 377,252	$ 506,877	$ (129,625)	(26)%
Tons:				
Oil & Gas Proppants	4,361	4,529	(168)	(4)%
Industrial & Specialty Products	2,642	3,024	(382)	(13)%
Total Tons	7,003	7,553	(550)	(7)%
Average Selling Price per Ton:				
Oil & Gas Proppants	$ 51.73	$ 75.42	$ (23.69)	(31)%
Industrial & Specialty Products	57.41	54.66	2.75	5 %
Overall Average Selling Price per Ton:	$ 53.87	$ 67.11	$ (13.24)	(20)%

Total sales decreased 26% for the nine months ended September 30, 2016 compared to the nine months ended September 30, 2015, driven by a 20% decrease in overall average selling price and a 7% decrease in total tons sold. Tons sold in-basin represented 36% and 37% of total company tons sold for the nine months ended September 30, 2016 and 2015, respectively.

The decrease in total sales was driven by Oil & Gas Proppants sales, which decreased 34%. Oil & Gas Proppants tons sold for the nine months ended September 30, 2016 decreased 4% and average selling price decreased 31%. These decreases were driven by the year over year decrease in demand for our frac sand from customers due to reduced drilling and completion activity.

Industrial & Specialty Products sales decreased 8% for the nine months ended September 30, 2016 compared to the nine months ended September 30, 2015. Tons sold decreased 13%, driven by our strategic shift among customers and products. Average selling price increased 5%, driven by new higher-margin product sales and price increases.

Cost of Goods Sold

Cost of goods sold decreased by $49.6 million, or 13%, to $328.9 million for the nine months ended September 30, 2016 compared to $378.5 million for the nine months ended September 30, 2015. As a percentage of sales, cost of goods sold increased to 87% for the nine months ended September 30, 2016 compared to 75% for the same period in 2015. These changes result from the main components of cost of goods sold as discussed below.

We incurred $169.0 million and $199.1 million of transportation and related costs for the nine months ended September 30, 2016 and 2015, respectively. The $30.1 million decrease was mainly due to fewer tons sold through transloads caused by lower demand for our frac sand at our transload sites and our transportation and logistics cost improvement efforts. As a percentage of sales, transportation and related costs increased to 45% for the nine months ended September 30, 2016 compared to 39% for the same period in 2015 mainly due to a decrease in average selling price.

We incurred $57.3 million and $60.9 million of operating labor costs for the nine months ended September 30, 2016 and 2015, respectively. The $3.6 million decrease in labor costs incurred was primarily due to fewer tons sold, partially offset by incremental costs related to NBI and Sandbox operations in 2016. As a percentage of sales, operating labor costs represented 15% for the nine months ended September 30, 2016 compared to 12% for the same period in 2015.

We incurred $18.9 million and $21.8 million of electricity and drying fuel (principally natural gas) costs for the nine months ended September 30, 2016 and 2015, respectively. The decrease in electricity and drying fuel costs incurred was due to fewer tons sold. As a percentage of sales, electricity and drying fuel costs represented 5% for the nine months ended September 30, 2016 compared to 4% for the same period in 2015.

We incurred $24.5 million and $28.8 million of maintenance and repair costs for the nine months ended September 30, 2016 and 2015, respectively. The decrease in maintenance and repair costs incurred was due to our cost improvement efforts and fewer tons sold. As a percentage of sales, maintenance and repair costs increased to 7% for the nine months ended September 30, 2016 compared to 6% for the same period in 2015.

Segment Contribution Margin

Oil & Gas Proppants contribution margin decreased by $89.0 million, or 109%, to $(7.0) million for the nine months ended September 30, 2016 compared to $82.0 million for the nine months ended September 30, 2015, driven by a 34% decrease in revenue partially offset by a 10% decrease in segment cost of goods sold.

Industrial & Specialty Products contribution margin increased by $5.0 million, or 9%, to $60.0 million for the nine months ended September 30, 2016 compared to $55.0 million for the nine months ended September 30, 2015, driven by increased higher margin products sales as a percentage of total sales and price increases.

Selling, General and Administrative Expenses

Selling, general and administrative expenses increased by $1.5 million, or 3%, to $48.6 million for the nine months ended September 30, 2016 compared to $47.1 million for the nine months ended September 30, 2015. The increase was primarily due to the following factors:

- Business development related expense decreased by $2.7 million to $5.6 million for the nine months ended September 30, 2016 compared to $8.3 million for the nine months ended September 30, 2015. This decrease is mainly due to a $6.5 million settlement of an unfavorable arbitration ruling during the nine months ended September 30, 2015 partially offset by our NBI and Sandbox acquisition-related costs. See Note J - Commitments and Contingencies of our Financial Statements for more information about this arbitration ruling.
- Compensation related expense increased by $4.6 million for the nine months ended September 30, 2016 compared to the nine months ended September 30, 2015, primarily due to increased incentive compensation and incremental expense related to NBI and Sandbox employees.
- Bad debt expense increased by $0.3 million for the nine months ended September 30, 2016 compared to the nine months ended September 30, 2015, mainly due to a recovery of a previously reserved receivable that occurred during the three months ended September 30, 2015.

In total, our selling, general and administrative costs represented approximately 13% and 9% of our sales for the nine months ended September 30, 2016 and 2015, respectively.

Depreciation, Depletion and Amortization

Depreciation, depletion and amortization expense increased by $4.8 million, or 12%, to $46.9 million for the nine months ended September 30, 2016 compared to $42.1 million for the nine months ended September 30, 2015. The year over year increase was driven by our NBI and Sandbox acquisitions as well as other capital spending. Depreciation, depletion and amortization costs represented approximately 12% and 8% of our sales for the nine months ended September 30, 2016 and 2015, respectively.

Operating Income (Loss)

Operating income decreased by $84.8 million, or 220%, to a $47.1 million operating loss for the nine months ended September 30, 2016 compared to $39.2 million of operating income for the nine months ended September 30, 2015. The decrease was due to a 26% decrease in sales and a 12% increase in depreciation, depletion and amortization expense, partially offset by a 13% decrease in cost of goods sold.

Interest Expense

Interest expense decreased by $0.4 million, or 2%, to $20.0 million for the nine months ended September 30, 2016 compared to $20.4 million for the nine months ended September 30, 2015, mainly due to decreases in our senior debt principal and deferred revenue partially offset by additional long term liabilities assumed in conjunction with our NBI and Sandbox acquisitions.

Provision for Income Taxes

The income tax benefit increased $22.5 million to $30.1 million for the nine months ended September 30, 2016 compared to $7.6 million for the nine months ended September 30, 2015. The increase was driven primarily by increased loss before income taxes and the discrete tax benefit due to the early adoption of ASU 2016-09 discussed in Note A - Summary of Significant Accounting Policies of our Financial Statements. The effective tax rate was 47% and (39)% for the nine months ended September 30, 2016 and 2015, respectively. See accompanying Note K - Income Taxes of our Financial Statements for more information.

Historically, our actual effective tax rates have differed from the statutory effective rate primarily due to the benefit received from statutory percentage depletion allowances. The deduction for statutory percentage depletion does not necessarily change proportionately to changes in income before income taxes.

Other income, net, including interest income

Other income was $2.9 million and $0.8 million for the nine months ended September 30, 2016 and 2015, respectively. The increase was mainly due to a gain of $1.5 million on insurance settlements that we received during the nine months ended September 30, 2016.

Net Income (Loss)

Net loss was $34.1 million for the nine months ended September 30, 2016 compared to a net income of $27.2 million for the nine months ended September 30, 2015. The year over year decrease was due to the factors noted above.

Liquidity and Capital Resources

Overview

Our principal liquidity requirements have historically been to service our debt, to meet our working capital, capital expenditure and mine development expenditure needs, to return cash to our stockholders, and to finance acquisitions. We have historically met our liquidity and capital investment needs with funds generated through operations. We have historically funded our acquisitions through cash on hand or borrowings under our credit facilities and equity issuances. Our working capital is the amount by which current assets exceed current liabilities and is a measure of our ability to pay our liabilities as they become due. In March 2016, we completed a public offering of 10,000,000 shares of our common stock for total cash proceeds of approximately $186.2 million net of underwriting discounts and offering costs. As of September 30, 2016, our working capital was $331.2 million and we had $46.0 million of availability under the Revolver.

We believe that cash generated through operations and our financing arrangements will be sufficient to meet working capital requirements, anticipated capital expenditures, scheduled debt payments and any dividends declared for at least the next 12 months.

Management and our Board remain committed to evaluating additional ways of creating shareholder value. Any determination to pay dividends and other distributions in cash, stock, or property in the future will be at the discretion of our Board and will be dependent on then-existing conditions, including our business conditions, our financial condition, results of operations, liquidity, capital requirements, contractual restrictions including restrictive covenants contained in debt agreements, and other factors. Additionally, because we are a holding company, our ability to pay dividends on our common stock may be limited by restrictions on the ability of our subsidiaries to pay dividends or make distributions to us, including restrictions under the terms of the agreements governing our indebtedness.

Cash Flow Analysis

A summary of operating, investing and financing activities (in thousands) is shown in the following table:

	Nine Months Ended September 30,		Percent Change
	2016	2015	'16 vs. '15
Net cash provided by (used in):			
Operating activities	$ 70	$ 36,416	(100)%
Investing activities	(187,506)	(8,702)	2,055 %
Financing activities	174,419	(39,420)	(542)%

Net Cash Provided by Operating Activities

Operating activities consist primarily of net income adjusted for certain non-cash and working capital items. Adjustments to net income for non-cash items include depreciation, depletion and amortization, deferred revenue, deferred income taxes, equity-based compensation and bad debt provision. In addition, operating cash flows include the effect of changes in operating assets and liabilities, principally accounts receivable, inventories, prepaid expenses and other current assets, income taxes payable and receivable, accounts payable and accrued expenses.

Net cash provided by operating activities was $0.1 million for the nine months ended September 30, 2016 compared to $36.4 million for the nine months ended September 30, 2015. This $36.3 million decrease in cash provided by operations was the result of a $61.3 million decrease in net income and the impact of the other components of operating activities.

Net Cash Provided Used in Investing Activities

Investing activities consist primarily of cash consideration paid to acquire businesses, capital expenditures for growth and maintenance and proceeds from the sale and maturity of short-term investments.

Net cash used in investing activities was $187.5 million for the nine months ended September 30, 2016. This was due to $176.4 million of cash consideration that was paid for our NBI and Sandbox acquisitions and capital expenditures of $32.8 million, offset by $21.9 million in proceeds from sales and maturities of short-term investments. Capital expenditures for the nine months ended September 30, 2016 were primarily for a purchase of reserves adjacent to our Ottawa, Illinois, facility, engineering, procurement and construction of our growth projects and other maintenance and cost improvement capital projects.

Net cash used in investing activities was $8.7 million for the nine months ended September 30, 2015. Capital expenditures for the nine months ended September 30, 2015, which totaled $38.2 million, were primarily for the engineering, procurement and construction of our growth projects including the Greenfield raw sand plant near Fairchild, Wisconsin and other maintenance and cost improvement capital projects.

Subject to our continuing evaluation of market conditions, we anticipate that our capital expenditures in 2016, including the purchase of reserves adjacent to our Ottawa, Illinois, facility, will be in a range of $42 million to $47 million, which is primarily associated with growth, maintenance and cost improvement capital projects. We expect to fund our capital expenditures through cash on our balance sheet, cash generated from our operations and cash generated from financing activities.

Net Cash Provided by (Used in) Financing Activities

Financing activities consist primarily of equity issuances, capital contributions, dividend payments, borrowings and repayments related to the Revolver, Term Loan, as well as fees and expenses paid in connection with our credit facilities, advance payments from our customers and capital leases.

Net cash provided by financing activities was $174.4 million for the nine months ended September 30, 2016, driven by $200.0 million of common stock issuances and $4.3 million of proceeds from options exercised, both of which were partially offset by $14.0 million of common stock issuance costs, $10.7 million of dividends paid, $4.0 million of long-term debt payments, $0.2 million of capital lease repayments and $1.0 million of tax payments related to shares withheld for vested restricted stock.

Net cash used in financing activities was $39.4 million in the nine months ended September 30, 2015, driven by $15.3 million of common stock repurchases, $20.1 million of dividends paid and $3.8 million of long-term debt payments.

Off-Balance Sheet Arrangements

We have no off-balance sheet arrangements that have or are likely to have a current or future material effect on our financial condition, changes in financial condition, sales, expenses, results of operations, liquidity, capital expenditures or capital resources.

Contractual Obligations

There have been no significant changes outside the ordinary course of business to our “Contractual Obligations” table in Part II, Item 7, “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” of our 2015 Annual Report. For more details on future minimum annual commitments under such operating leases, please see accompanying Note J - Commitments and Contingencies to our Financial Statements in Part I, Item 1 of this Quarterly Report on Form 10-Q.

Environmental Matters

We are subject to various federal, state and local laws and regulations governing, among other things, hazardous materials, air and water emissions, environmental contamination and reclamation and the protection of the environment and natural resources. We have made, and expect to make in the future, expenditures to comply with such laws and regulations, but cannot predict the full amount of such future expenditures. As of September 30, 2016, we had $13.7 million accrued for future reclamation costs, as compared to $12.3 million as of December 31, 2015.

We discuss certain environmental matters relating to our various production and other facilities, certain regulatory requirements relating to human exposure to crystalline silica and our mining activity and how such matters may affect our business in the future under Item 1, “Business,” Item 1A, “Risk Factors” Item 3, “Legal Proceedings”, and Item 7, “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Environmental Matters” in our 2015 Annual Report.

Critical Accounting Estimates

Our unaudited condensed consolidated financial statements have been prepared in conformity with GAAP, which requires management to make estimates and assumptions that affect the reported amount of assets and liabilities at the date of our financial statements and the reported amounts of revenues and expenses during the reporting period. While we do not believe that the reported amounts would be materially different, application of these policies involves the exercise of judgment and the use of assumptions as to future uncertainties and, as a result, actual results could differ from these estimates. We

evaluate our estimates and judgments on an ongoing basis. We base our estimates on experience and on various other assumptions that are believed to be reasonable under the circumstances. All of our significant accounting policies, including certain critical accounting policies, are disclosed in our 2015 Annual Report.

Recent Accounting Pronouncements

New accounting guidance that we have recently adopted, as well as accounting guidance that has been recently issued but not yet adopted by us, are included in Note A - Summary of Significant Accounting Policies to our Financial Statements in Part I, Item 1 of this Quarterly Report on Form 10-Q.

Availability of Reports; Website Access; Other Information

Our internet address is http://www.ussilica.com. Through “Investor Relations”—“SEC Filings” on our home page, we make available free of charge our Annual Report on Form 10-K, our Quarterly Reports on Form 10-Q, our proxy statements, our Current Reports on Form 8-K, SEC Forms 3, 4 and 5 and any amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC. Our reports filed with the SEC are also made available to read and copy at the SEC’s Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. Information about the Public Reference Room may be obtained by contacting the SEC at 1-800-SEC-0330. Reports filed with the SEC are also made available on its website at www.sec.gov.

Copies of our Corporate Governance Guidelines, our Audit Committee, Compensation Committee and Nominating and Governance Committee charters, the Code of Conduct for our Board of Directors and Code of Conduct and Ethics for U.S. Silica employees (including the chief executive officer, chief financial officer and corporate controller) can also be found on our website. Any amendments or waivers to the Code of Conduct and Ethics applicable to the chief executive officer, chief financial officer and corporate controller can also be found in the “Investor Relations” section of the U.S. Silica website. Stockholders may also request a free copy of these documents from: U.S. Silica Holdings, Inc., attn.: Investor Relations, 8490 Progress Drive, Suite 300, Frederick, Maryland 21701 or IR@ussilica.com.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Market Risk

We are exposed to certain market risks, which exist as a part of our ongoing business operations. Such risks arise from adverse changes in market rates, prices and conditions. We address such market risks as discussed in "How We Generate Our Sales" in Item 2 of this Form 10-Q, Management's Discussion and Analysis of Financial Condition and Results of Operations.

Interest Rate Risk

We are exposed to interest rate risk arising from adverse changes in interest rates. As of September 30, 2016, we have $495.5 million of debt outstanding under our senior credit facility. Assuming no change in the amount outstanding, and LIBOR is greater than the 1.0% minimum base rate on the Term Loan, a hypothetical increase or decrease in interest rates by 1.0% would have changed our interest expense by $4.2 million per year.

We use interest rate derivatives in the normal course of our business to manage both our interest cost and the risks associated with changing interest rates. We do not use derivatives for trading or speculative purposes. The following table summarizes the fair value of our derivative instruments (in thousands) at September 30, 2016 and December 31, 2015.

	September 30, 2016				December 31, 2015			
	Maturity Date	Contract/Notional Amount	Carrying Amount	Fair Value	Maturity Date	Contract/Notional Amount	Carrying Amount	Fair Value
Interest rate cap agreement[(1)]	2019	$249 million	$ 12	$ 12	2016	$252 million	$ —	$ —

(1) Agreements limit the LIBOR floating interest rate base to 4%.

Credit Risk

We are subject to risks of loss resulting from nonpayment or nonperformance by our customers. We examine the creditworthiness of third-party customers to whom we extend credit and manage our exposure to credit risk through credit analysis, credit approval, credit limits and monitoring procedures, and for certain transactions, we may request letters of credit, prepayments or guarantees, although collateral is generally not required.

Despite enhancing our examination of our customers' credit worthiness, we may still experience delays or failures in customer payments. Some of our customers have reported experiencing financial difficulties. With respect to customers that may file for bankruptcy protection, we may not be able to collect sums owed to us by these customers and we also may be required to refund pre-petition amounts paid to us during the preference period (typically 90 days) prior to the bankruptcy filing.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our chief executive officer and chief financial officer, evaluated the effectiveness of our disclosure controls and procedures as of September 30, 2016. The term “disclosure controls and procedures,” as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, means controls and other procedures of a company that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC’s rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the company’s management, including its principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure. Based on the evaluation of our disclosure controls and procedures as of September 30, 2016, our chief executive officer and chief financial officer concluded that, as of such date, our disclosure controls and procedures were effective at the reasonable assurance level.

Management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable, and not absolute, assurance of achieving their objectives and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting identified in management’s evaluation pursuant to Rules 13a-15(d) or 15d-15(d) of the Exchange Act during the quarter ended September 30, 2016 that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting, except as noted below.

We acquired NBI and Sandbox in August 2016. We anticipate excluding the internal control over financial reporting of NBI and Sandbox from the evaluation of the effectiveness of our internal control over financial reporting as of December 31, 2016. This decision is based upon the significance of NBI and Sandbox and the timing of integration efforts underway to transition NBI's and Sandbox's processes, information technology systems and other components of internal control over financial reporting to our internal control structure. We have expanded our consolidation and disclosure controls and procedures to include NBI and Sandbox, and we continue to assess the current internal control over financial reporting.

PART II—OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

In addition to the matter described below, we are subject to various legal proceedings, claims, and governmental inspections, audits or investigations arising out of our business which cover matters such as general commercial, governmental regulations, antitrust and trade regulations, product liability, environmental, intellectual property, employment and other actions. Although the outcomes of these routine claims cannot be predicted with certainty, in the opinion of management, the ultimate resolution of these matters will not have a material adverse effect on our financial position or results of operations.

Prolonged inhalation of excessive levels of respirable crystalline silica dust can result in silicosis, a disease of the lungs. Breathing large amounts of respirable silica dust over time may injure a person's lungs by causing scar tissue to form. Crystalline silica in the form of quartz is a basic component of soil, sand, granite and most other types of rock. Cutting, breaking, crushing, drilling, grinding and abrasive blasting of or with crystalline silica containing materials can produce fine silica dust, the inhalation of which may cause silicosis, lung cancer and possibly other diseases including immune system disorders such as scleroderma. Sources of exposure to respirable crystalline silica dust include sandblasting, foundry manufacturing, crushing and drilling of rock, masonry and concrete work, mining and tunneling, and cement and asphalt pavement manufacturing.

Since at least 1975, we and/or our predecessors have been named as a defendant, usually among many defendants, in numerous lawsuits brought by or on behalf of current or former employees of our customers alleging damages caused by silica exposure. Prior to 2001, the number of silicosis lawsuits filed annually against the commercial silica industry remained relatively stable and was generally below 100, but between 2001 and 2004 the number of silicosis lawsuits filed against the commercial silica industry substantially increased. This increase led to greater scrutiny of the nature of the claims filed, and in June 2005 the U.S. District Court for the Southern District of Texas issued an opinion in the former federal silica multi-district litigation remanding almost all of the 10,000 cases then pending in the multi-district litigation back to the state courts from which they originated for further review and medical qualification, leading to a number of silicosis case dismissals across the United States. In conjunction with this and other favorable court rulings establishing "sophisticated user" and "no duty to warn" defenses for silica producers, several states, including Texas, Ohio and Florida, have passed medical criteria legislation that requires proof of actual impairment before a lawsuit can be filed.

As a result of the above developments, the filing rate of new claims against us over the past three years has decreased to below pre-2001 levels, and we were named as a defendant in three, one and zero new silicosis cases filed in 2013, 2014 and 2015, respectively. During the nine months ended September 30, 2016, one additional claim was brought against us. As of September 30, 2016, there are a total of approximately 74 active silica-related products liability claims pending in which we were a defendant and approximately 87 inactive claims. Almost all of the claims pending against us arise out of the alleged use of our silica products in foundries or as an abrasive blast media, and involve various other defendants. Prior to the fourth quarter of 2012, we had insurance policies for both our predecessors that covered certain claims for alleged silica exposure for periods prior to certain dates in 1985 and 1986 (with respect to certain insurance). As a result of a settlement with a former owner of ours and its insurers in the fourth quarter of 2012, some of these policies are no longer available to us, and we will not seek reimbursement for any defense costs or claim payments from these policies. Other insurance policies, however, continue to remain available to us and will continue to make such payments on our behalf.

The silica-related litigation brought against us to date has not resulted in material liability to us. However, we continue to have silica-related products liability claims filed against us, including claims that allege silica exposure for periods for which we do not have insurance coverage. Any such pending or future claims or inadequacies of our insurance coverage could have a material adverse effect on our business, reputation or results of operations. For more information regarding silica-related litigation, see Part I, Item 1A of our 2015 Annual Report "Risk Factors—Risks Related to Our Business—Silica-related health issues and litigation could have a material adverse effect on our business, reputation or results of operations."

ITEM 1A. RISK FACTORS

As of September 30, 2016, there are no material changes from the risk factors disclosed in Item 1A of Part I in our 2015 Annual Report other than as set forth below.

Our trucking services are highly regulated, and increased direct and indirect costs of compliance with, or liability for violation of, existing or future regulations could have a material adverse effect on our business.

The Department of Transportation (DOT) and various state agencies exercise broad powers over our trucking services, generally governing matters including authorization to engage in motor carrier service, equipment operation, safety, and financial reporting. In the future, we may become subject to new or more restrictive regulations, such as regulations relating to engine exhaust emissions, hours of service that our drivers may provide in any one time period, security and other matters, which could substantially impair equipment productivity and increase our costs. We may be audited periodically by the DOT to ensure that we are in compliance with various safety, hours-of-service, and other rules and regulations. If we were found to be out of compliance, the DOT could restrict or otherwise impact our trucking services, which would adversely affect our profitability and results of operations.

Difficulty in truckload driver and independent contractor recruitment and retention may have a materially adverse effect on our business.

With respect to our trucking services, difficulty in attracting or retaining qualified drivers and independent contractors could have a materially adverse effect on our growth and profitability. The truckload transportation industry periodically experiences a shortage of qualified drivers, particularly during periods of economic expansion, in which alternative employment opportunities are more plentiful and freight demand increases, or during periods of economic downturns, in which unemployment benefits might be extended and financing is limited for independent contractors who seek to purchase equipment or for students who seek financial aid for driving school. Our independent contractors are responsible for paying for their own equipment, fuel, and other operating costs, and significant increases in these costs could cause them to seek higher compensation from us or seek other opportunities within or outside the trucking industry. The trucking industry suffers from a high driver turnover rate, which requires us to continually recruit a substantial number of drivers to operate our equipment. If we were unable to attract and contract with independent contractors, we could be forced to, among other things, limit our growth, decrease the number of our tractors in service, adjust our driver compensation package or independent contractor compensation, or pay higher rates to third-party truckload carriers, which could adversely affect our profitability and results of operations if not offset by a corresponding increase in customer rates.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

Share Repurchase Program

The following table presents the total number of shares of our common stock that we purchased during the third quarter of 2016, the average price paid per share, the number of shares that we purchased as part of our publicly announced repurchase program, and the approximate dollar value of shares that still could have been purchased at the end of the applicable fiscal period pursuant to our June 2012 share repurchase program:

Period	Total Number of Shares Purchased		Average Price Paid Per Share	Total Number of Shares Purchased as Part of Publicly Announced Program[1]	Maximum Dollar Value of Shares that May Yet Be Purchased Under the Program[1]
July 2016	—		$ —	—	
August 2016	490	(2)	$ 40.21	—	
September 2016	59	(2)	$ 42.63	—	
Total	549		$ 41.42	—	$ 33,173,725

(1) A program covering the repurchase of up to $25.0 million of our common stock was initially announced in June 2012 and was increased to $50.0 million in December 2014. This program expires on December 11, 2017.

(2) Represents shares withheld by U.S. Silica to pay taxes due upon the vesting of employee restricted stock and restricted stock units.

Subsequent to September 30, 2016, we have not repurchased any shares of our common stock.

For more details on the stock repurchase program, see Note B - Capital Structure and Accumulated Comprehensive Income to our Financial Statements in Part I, Item 1 of this Quarterly Report on Form 10-Q.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. MINE SAFETY DISCLOSURES

Safety is one of our core values, and we strive for excellence in the achievement of a workplace free of injuries and occupational illnesses. Our health and safety leadership team has developed comprehensive safety policies and standards, which include detailed standards and procedures for safe production, addressing topics such as employee training, risk management, workplace inspection, emergency response, accident investigation and program auditing. We place special emphasis on the importance of continuous improvement in occupational health, personal injury avoidance and prevention, emergency preparedness, and property damage elimination. In addition to strong leadership and involvement from all levels of the organization, these programs and procedures form the cornerstone of our safety initiatives, ensuring that employees are provided a safe and healthy environment and are intended as a means to reduce workplace accidents, incidents and losses, comply with all mining-related regulations and provide support for both regulators and the industry to improve mine safety. While we want to have productive operations in full regulatory compliance, we know it is equally essential that we motivate and train our people to think, practice and feel a personal responsibility for health and safety on and off the job.

All of our production facilities, with the exception of our resin-coated sand facility, are classified as mines and are subject to regulation by the Federal Mine Safety and Health Administration (“MSHA”) under the Federal Mine Safety and Health Act of 1977 (the “Mine Act”). MSHA inspects our mines on a regular basis and issues various citations and orders when it believes a violation has occurred under the Mine Act. Following passage of The Mine Improvement and New Emergency Response Act of 2006, MSHA significantly increased the numbers of citations and orders charged against mining operations. The dollar penalties assessed for citations issued has also increased in recent years. Information concerning mine safety violations or other regulatory matters required by Section 1503(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act and Item 104 of Regulation S-K (17 CFR 229.104) is included in Exhibit 95.1 to this Quarterly Report filed on Form 10-Q.

ITEM 5. OTHER INFORMATION

Forward Looking Statements

This Quarterly Report on Form 10-Q contains forward-looking statements that are subject to risks and uncertainties. All statements other than statements of historical fact included in this Quarterly Report on Form 10-Q are forward-looking statements. Forward-looking statements give our current expectations and projections relating to our financial condition, results of operations, plans, objectives, future performance and business. You can identify forward-looking statements by the fact that they do not relate strictly to historical or current facts. These statements may include words such as “anticipate,” “estimate,” “expect,” “project,” “plan,” “intend,” “believe,” “may,” “will,” “should,” “can have,” “likely” and other words and terms of similar meaning in connection with any discussion of the timing or nature of future operating or financial performance or other events. For example, all statements we make relating to our estimated and projected costs, expenditures, cash flows, growth rates and financial results, our plans and objectives for future operations, growth or initiatives, strategies or the expected outcome or impact of pending or threatened litigation are forward-looking statements. All forward-looking statements are subject to risks and uncertainties that may cause actual results to differ materially from those that we expected, including:

- fluctuations in demand for commercial silica;
- the cyclical nature of our customers’ businesses;
- operating risks that are beyond our control, such as changes in the price and availability of transportation, natural gas or electricity; unusual or unexpected geological formations or pressures; cave-ins, pit wall failures or rock falls; or unanticipated ground, grade or water conditions;
- our dependence on three of our plants for a significant portion of our sales;
- the level of activity in the natural gas and oil industries;
- decreased demand for frac sand or the development of either effective alternative proppants or new processes to replace hydraulic fracturing;

- federal, state and local legislative and regulatory initiatives relating to hydraulic fracturing and the potential for related regulatory action or litigation affecting our customers' operations;
- our rights and ability to mine our properties and our renewal or receipt of the required permits and approvals from governmental authorities and other third parties;
- our ability to implement our capacity expansion plans within our current timetable and budget and our ability to secure demand for our increased production capacity, and the actual operating costs once we have completed the capacity expansion;
- our ability to succeed in competitive markets;
- loss of, or reduction in, business from our largest customers;
- increasing costs or a lack of dependability or availability of transportation services and transload network access infrastructure;
- extensive regulation of trucking services;
- our ability to recruit and retain truckload drivers;
- increases in the prices of, or interruptions in the supply of, natural gas and electricity, or any other energy sources;
- increases in the price of diesel fuel;
- diminished access to water;
- our ability to successfully complete acquisitions or integrate acquired businesses;
- our ability to make capital expenditures to maintain, develop and increase our asset base and our ability to obtain needed capital or financing on satisfactory terms;
- our substantial indebtedness and pension obligations;
- restrictions imposed by our indebtedness on our current and future operations;
- contractual obligations that require us to deliver minimum amounts of frac sand or purchase minimum amounts of services;
- the accuracy of our estimates of mineral reserves and resource deposits;
- a shortage of skilled labor and rising costs in the mining industry;
- our ability to attract and retain key personnel;
- our ability to maintain satisfactory labor relations;
- our reliance on trade secrets and contractual restrictions, rather than patents, to protect our proprietary rights;
- our significant unfunded pension obligations and post-retirement health care liabilities;
- our ability to maintain effective quality control systems at our mining, processing and production facilities;
- seasonal and severe weather conditions;
- fluctuations in our sales and results of operations due to seasonality and other factors;
- interruptions or failures in our information technology systems;
- the impact of a terrorist attack or armed conflict;
- extensive and evolving environmental, mining, health and safety, licensing, reclamation and other regulation (and changes in their enforcement or interpretation);
- silica-related health issues and corresponding litigation;
- our ability to acquire, maintain or renew financial assurances related to the reclamation and restoration of mining property; and
- other factors included and disclosed in Part I, Item 1A, "Risk Factors" of our 2015 Annual Report.

We derive many of our forward-looking statements from our operating budgets and forecasts, which are based on many detailed assumptions. While we believe that our assumptions are reasonable, we caution that it is very difficult to predict the impact of known factors, and it is impossible for us to anticipate all factors that could affect our actual results. Important factors that could cause actual results to differ materially from our expectations, or cautionary statements, are disclosed under Item 1A, “Risk Factors” and Item 7, “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in our 2015 Annual Report. All written and oral forward-looking statements attributable to us, or persons acting on our behalf, are expressly qualified in their entirety by these cautionary statements as well as other cautionary statements that are made from time to time in our other filings with the SEC, including this Quarterly Report on Form 10-Q, and public communications. You should evaluate all forward-looking statements made in this Quarterly Report on Form 10-Q in the context of these risks and uncertainties.

We caution you that the important factors referenced above may not contain all of the factors that are important to you. In addition, we cannot assure you that we will realize the results or developments we expect or anticipate or, even if substantially realized, that they will result in the consequences or affect us or our operations in the way we expect. The forward-looking statements included in this Quarterly Report on Form 10-Q are made only as of the date hereof. We undertake no obligation to update or revise any forward-looking statement as a result of new information, future events or otherwise, except as otherwise required by law.

ITEM 6. EXHIBITS

The information called for by this Item is incorporated herein by reference from the Exhibit Index included in this Quarterly Report on Form 10-Q.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized, this 4th day of November, 2016.

U.S. Silica Holdings, Inc.

/s/ DONALD A. MERRIL

Name:	Donald A. Merril
Title:	Chief Financial Officer

EXHIBIT INDEX

Exhibit Number	Description	Incorporated by Reference			
		Form	File No.	Exhibit	Filing Date
2.1*#	Agreement and Plan of Merger, dated as of July 15, 2016, by and among U.S. Silica Holdings, Inc., New Birmingham Merger Corp., NBI Merger Subsidiary II, Inc., New Birmingham, Inc. and each of David Durrett and Erik Dall, as representatives of the sellers and optionholders.				
2.2*#	Membership Unit Purchase Agreement, dated as of August 1, 2016, by and among U.S. Silica Company, U.S. Silica Holdings, Inc., Sandbox Enterprises, LLC, the members of Sandbox Enterprises, LLC and Sandy Creek Capital, LLC, as representative of the sellers.				
3.1	Second Amended and Restated Certificate of Incorporation of U.S. Silica Holdings, Inc., effective January 31, 2012.	8-K	001-35416	3.1	February 6, 2012
3.2	Certificate of Change of Registered Agent and/or Registered Office	8-K	001-35416	3.1	May 11, 2015
3.3	Second Amended and Restated Bylaws of U.S. Silica Holdings, Inc., effective January 31, 2012.	8-K	001-35416	3.2	February 6, 2012
4.1	Specimen Common Stock Certificate.	S-1/A	333-175636	4.1	December 7, 2011
4.2	Registration Rights Agreement, dated as of August 16, 2016, by and among U.S. Silica Holdings, Inc. and each person identified on the signature pages thereto.	S-3ASR	333-213870	4.1	September 29, 2016
4.3	Registration Rights Agreement, dated as of August 22, 2016, by and among U.S. Silica Holdings, Inc. and each person identified on the signature pages thereto.	S-3ASR	333-213870	4.2	September 29, 2016
31.1*	Rule 13a-14(a)/15(d)-14(a) Certification by Bryan A. Shinn, Chief Executive Officer.				
31.2*	Rule 13a-14(a)/15(d)-14(a) Certification by Donald A. Merril, Chief Financial Officer.				
32.1*	Section 1350 Certification by Bryan A. Shinn, Chief Executive Officer.				
32.2*	Section 1350 Certification by Donald A. Merril, Chief Financial Officer.				
95.1*	Mine Safety Disclosure				
99.1*	Consent of PropTester, Inc.				
101*	101.INS XBRL Instance				
	101.SCH XBRL Taxonomy Extension Schema				
	101.CAL XBRL Taxonomy Extension Calculation				
	101.LAB XBRL Taxonomy Extension Labels				
	101.PRE XBRL Taxonomy Extension Presentation				
	101.DEF XBRL Taxonomy Extension Definition				

* Filed herewith

\# Schedules have been omitted pursuant to Item 601(b)(2) of Regulation S-K. We will furnish the omitted schedules to the Securities and Exchange Commission upon request by the Commission.

We will furnish any of our shareowners a copy of any of the above Exhibits not included herein upon the written request of such shareowner and the payment to U.S. Silica Holdings, Inc. of the reasonable expenses incurred in furnishing such copy or copies.

AGREEMENT AND PLAN OF MERGER

by and among

U.S. SILICA HOLDINGS, INC.,

NEW BIRMINGHAM MERGER CORP.,

NBI MERGER SUBSIDIARY II, INC.,

NEW BIRMINGHAM, INC.,

and

EACH OF DAVID DURRETT AND ERIK DALL,
as Representatives of the Sellers and Optionholders

July 15, 2016

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EXHIBITS

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this "Agreement"), dated as of July 15, 2016, is made by and among U.S. Silica Holdings, Inc., a Delaware corporation (the "Purchaser"), New Birmingham Merger Corp., a Nevada corporation and wholly-owned subsidiary of Purchaser ("Merger Sub 1"), NBI Merger Subsidiary II, Inc., a Delaware corporation and wholly-owned subsidiary of Purchaser ("Merger Sub 2"), New Birmingham, Inc., a Nevada corporation (the "Company"), and David

Durrett and Erik Dall, in their joint capacity as the Sellers Representatives hereunder (collectively, the "Sellers Representatives"). Capitalized terms used and not otherwise defined herein have the meanings set forth in Article IX below.

WHEREAS, the Sellers own all of the issued and outstanding capital stock of the Company;

WHEREAS, the Optionholders collectively own all of the Options, which consists of Options to acquire up to 750,000 shares of Common Stock on the terms and conditions provided in the agreements evidencing such Options;

WHEREAS, Purchaser, Merger Sub 1 and the Company intend to effect a merger of Merger Sub 1 with and into the Company in accordance with this Agreement and the Nevada Act (the "Merger"). Upon the consummation of the Merger, Merger Sub 1 will cease to exist, and the Company will become a wholly-owned subsidiary of Purchaser;

WHEREAS, immediately following the Merger, Purchaser, Merger Sub 2 and the Surviving Corporation intend to effect a merger of the Surviving Corporation with and into Merger Sub 2 in accordance with this Agreement and the DGCL (the "Second Merger"). Upon the consummation of the Second Merger, the Surviving Corporation will cease to exist, and Merger Sub 2 will continue as a wholly-owned subsidiary of Purchaser;

WHEREAS, for federal income tax purposes, it is intended that the Merger and Second Merger (together, the "Transactions") contemplated herein shall, as part of an integrated plan of reorganization as described in Rev. Rul. 2001-46, 2001-2 C.B. 321, qualify as a reorganization within the meaning of Sections 368(a)(1)(A) and 368(a)(2)(D) of the Code and the regulations promulgated thereunder;

WHEREAS, the respective boards of directors of Purchaser, Merger Sub 1 and Merger Sub 2 have, on the terms and subject to the conditions set forth in this Agreement, to the extent applicable, (i) determined that it is fair to, and in the best interest of, their respective companies for Purchaser to acquire all of the issued and outstanding shares of capital stock of the Company through the Merger, upon which the Company shall be a wholly owned subsidiary of Purchaser, to be followed immediately by the Second Merger, and (ii) authorized and approved this Agreement, the Merger, the Second Merger and the consummation of the transactions contemplated hereby and delivered to each other written copies thereof;

WHEREAS, the board of the Company has, on the terms and subject to the conditions set forth in this Agreement, to the extent applicable, (i) determined that it is fair to, and in the best interest of, the Company for Purchaser to acquire all of the issued and outstanding shares of capital stock of the Company through the Merger, upon which the Company shall be a wholly owned subsidiary of Purchaser, and (ii) authorized and approved this Agreement, the Merger, and the consummation of the transactions contemplated hereby and delivered to each other written copies thereof; and

WHEREAS, immediately following the execution and delivery of this Agreement, holders of Common Stock with sufficient voting power to adopt this Agreement and approve the terms of the Merger shall execute and deliver to Purchaser a written consent adopting this Agreement (the "Stockholder Consent").

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Article I

THE MERGERS

1.01 Mergers

. On and subject to the terms and conditions of this Agreement, at the Closing:

(a) First Merger.

(i) The Merger will be consummated by the filing of articles of merger in customary form with the Secretary of State of the State of Nevada (the "Articles of Merger") in accordance with Nevada Act. Upon such filing, Merger Sub 1 shall be merged with and into the Company, the separate existence of Merger Sub 1 shall cease and the Company shall continue as the surviving corporation under the laws of the State of Nevada (the "Surviving Corporation"). The Merger shall be effective at such time as the Articles of Merger are duly filed with and accepted for record by the Secretary of State of the State of Nevada or such later time as the parties may specify in the Articles of Merger (the "Effective Time").

(ii) At the Effective Time, by virtue of the Merger and without any further action by any other Person:

(A) all the properties, rights, privileges, powers and franchises of the Company and Merger Sub 1 shall vest in the Surviving Corporation and all debts, liabilities, obligations and duties of the Company and Merger Sub 1 shall become debts, liabilities, obligations and duties of the Surviving Corporation;

(B) (y) the certificate of incorporation of Merger Sub 1, as in effect immediately prior to the Effective Time, shall be the certificate of incorporation of the Surviving Corporation as of the Effective Time, except that all references to Merger Sub 1 in the certificate of incorporation shall be changed to refer to "New Birmingham, Inc."; and (z) the bylaws of Merger Sub 1, as in effect immediately prior to the Effective Time, shall be the bylaws of the Surviving Corporation as of the Effective Time, except that all references to Merger Sub 1 in the bylaws shall be changed to refer to "New Birmingham, Inc.";

(C) the directors and officers of Merger Sub 1 at the Effective Time shall be the directors and officers of the Surviving Corporation, in each case until successors are duly elected or appointed in accordance with the articles of incorporation and bylaws of the Surviving Corporation and the Nevada Act;

(D) each share of common stock of Merger Sub 1 issued and outstanding immediately prior to the Effective Time will be converted into and become one validly issued, fully paid and non-assessable share of common stock of the Surviving Corporation;

(E) each Share issued and outstanding immediately prior to the Effective Time (other than Shares held in the treasury of the Company and any Dissenting Shares) and all rights in respect thereof shall forthwith cease to exist and be converted into and represent the right to receive, upon delivery of a duly-executed and completed letter of transmittal in the form attached hereto as Exhibit A ("Letter of Transmittal"), the Per Share Merger Consideration; and

(iii) all option plans of the Company, including any plan pursuant to which the Options were granted, shall be terminated and cease to exist pursuant to such actions by the board of directors, prior to the Effective Time, as necessary and appropriate to effectuate such termination.

(b) Second Merger.

(i) The Second Merger will be consummated by the filing of (A) a certificate of merger in customary form with the Secretary of State of the State of Delaware (the "Certificate of Merger") in accordance with the DGCL, and (B) articles of merger in customary form with the Secretary of State of the State of Nevada (the "Second Articles of Merger") in accordance with the Nevada Act. Upon such filings, the Surviving Corporation shall be merged with and into Merger Sub 2, the separate existence of the Surviving Corporation shall cease and Merger Sub 2 shall continue as the surviving corporation under the laws of the State of Delaware (the "Second Surviving Corporation"). The Second Merger shall be effective at such time as the Certificate of Merger and Second Articles of Merger are duly filed with and accepted for record by the Secretary of State of the State of Delaware and the Secretary of State of the State of Nevada, respectively, or such later time as the parties may specify in the Certificate of Merger and the Second Articles of Merger (the "Second Effective Time").

(ii) At the Second Effective Time, by virtue of the Second Merger and without any further action by any other Person:

(A) all the properties, rights, privileges, powers and franchises of the Surviving Corporation and Merger Sub 2 shall vest in the Second Surviving Corporation and all debts, liabilities, obligations and duties of the Surviving Corporation and Merger Sub 2 shall become debts, liabilities, obligations and duties of the Second Surviving Corporation;

(B) (y) the certificate of incorporation of Merger Sub 2, as in effect immediately prior to the Effective Time, shall be the certificate of incorporation of the Second Surviving Corporation as of the Effective Time, except that all references to Merger Sub 2 in the certificate of incorporation shall be changed to refer to "New Birmingham, Inc."; and (z) the bylaws of Merger Sub 2, as in effect immediately prior to the Effective Time, shall be the bylaws of the Second Surviving Corporation as of the Effective Time, except that all references to Merger Sub 2 in the bylaws shall be changed to refer to "New Birmingham, Inc.";

(C) the directors and officers of Merger Sub 2 at the Effective Time shall be the directors and officers of the Second Surviving Corporation, in each case until successors are duly elected or appointed in accordance with the articles of incorporation and bylaws of the Second Surviving Corporation and the DGCL;

(D) each share of common stock of the Surviving Corporation issued and outstanding immediately prior to the Effective Time will be converted into and become one validly issued, fully paid and non-assessable share of common stock of the Second Surviving Corporation; and

(E) each share of common stock of Merger Sub 2 issued and outstanding immediately prior to the Effective Time and all rights in respect thereof shall forthwith cease to exist.

1.02 Estimated Cash Purchase Price and Stock Consideration

. The aggregate consideration for the Merger pursuant to this Agreement (the "Merger Consideration") will be (a) an amount of cash equal to (i) $111,100,000, plus (ii) the amount by which Estimated Net Working Capital exceeds Target Working

Capital (or minus the amount by which Target Working Capital exceeds Estimated Net Working Capital), plus (iii) the total amount of Estimated Cash on Hand, minus (iv) the outstanding amount of Estimated Indebtedness, minus (v) the unpaid Estimated Seller Transaction Expenses (the "Estimated Cash Purchase Price") and (b) the Stock Consideration. The Estimated Cash Purchase Price will be subject to adjustment after the Closing pursuant to Section 1.05. For purposes of this Agreement, the term "Closing Payment" shall mean (x) the Estimated Cash Purchase Price minus (y) the Indemnity Escrow Amount and the Working Capital Escrow Amount and minus (z) the Sellers Representatives Admin Expense Fund.

1.03 The Closing

. The closing of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of Kirkland & Ellis LLP located at 300 North LaSalle Street, Chicago, Illinois 60654 at 10:00 a.m. on the second (2nd) business day following full satisfaction or waiver of all of the closing conditions set forth in Article II hereof (other than those to be satisfied at the Closing, but subject to the satisfaction of those conditions) or on such other date as is mutually agreeable to the Purchaser and the Sellers Representatives. The date and time of the Closing are referred to herein as the "Closing Date". By mutual agreement of the parties, the Closing may take place by conference call and electronic (i.e., email/pdf) or facsimile exchange of documents.

1.04 The Closing Transactions. Subject to the terms and conditions set forth in this Agreement, the parties hereto shall consummate the following transactions (the "Closing Transactions") on the Closing Date:

(a) the Sellers Representatives shall deliver to the Purchaser (i) completed and duly executed Letters of Transmittal from all Sellers, together with all of the stock certificates evidencing the Shares, and (ii) all books and records and other property of the Company or any of its Subsidiaries in any Seller's possession or under any Seller's control;

(b) the Purchaser shall (i) deliver to the Sellers Representatives (on behalf of the Sellers other than Proterra in accordance with their respective Allocation Percentages) an amount in cash equal to the Closing Payment, less the portion thereof to be delivered to Proterra pursuant to the immediately following clause (ii), by wire transfer of immediately available funds to the account(s) designated by the Sellers Representatives (which account(s) shall be designated by the Sellers Representatives to the Purchaser in writing at least three (3) Business Days before the Closing Date), (ii) deliver to Proterra an amount in cash equal to Proterra's Allocation Percentage of the Closing Payment, by wire transfer of immediately available funds to the account designated by Proterra (which account shall be designated by Proterra to the Purchaser in writing at least three (3) Business Days before the Closing Date), and (iii) issue or transfer, or cause to be issued or transferred, to the Sellers (in accordance with their respective Allocation Percentages) the number of Purchaser Shares payable as the Stock Consideration pursuant to the terms hereof, which may be represented by book-entry interests or one or more certificates issued to each Seller at the Purchaser's election;

(c) the Company shall deliver to the Purchaser appropriate evidence of releases of any Liens (other than any Permitted Liens) related to the assets and properties of the Company and its Subsidiaries and payoff letters with respect to any Indebtedness set forth on the Indebtedness Payoff Schedule outstanding as of the Closing (in each case in a form reasonably satisfactory to the Purchaser);

(d) the Purchaser shall repay, or cause to be repaid, on behalf of the Company and its Subsidiaries, all amounts necessary to discharge fully the then outstanding balance of the Indebtedness (as set forth on the Indebtedness Payoff Schedule delivered by the Sellers Representatives or the Company to Purchaser at least three (3) Business Days prior to the Closing Date) by wire transfer of immediately available funds to the account(s) designated by the holders of such Indebtedness;

(e) the Purchaser shall repay, or cause to be repaid, on behalf of the Sellers, the Company and its Subsidiaries, all amounts necessary to discharge fully the then outstanding balance of all Seller Transaction Expenses, by wire transfer of immediately available funds, to the account(s) designated by each Person to whom such Seller Transaction Expenses are to be paid and delivered in writing by the Sellers Representatives or the Company to Purchaser at least three (3) Business Days prior to the Closing Date;

(f) the Purchaser shall deliver the Indemnity Escrow Amount and the Working Capital Escrow Amount by wire transfer of immediately available funds to the Escrow Agent;

(g) Purchaser shall deposit, or cause to be deposited, the Sellers Representatives Admin Expense Fund by wire transfer of immediately available funds to an account designated in writing by the Sellers Representatives at least three (3) Business Days prior to the Closing Date;

(h) each Seller shall deliver to Purchaser at least three (3) Business Days prior to the Closing Date such information concerning the Seller as Purchaser or its registrar and transfer agent may reasonably request at least five (5) Business Days prior to the Closing Date in order to issue the Purchaser Shares to such Seller; and

(i) the Purchaser and the Sellers Representatives or the Company, as applicable, shall make such other deliveries as are required by Article II hereof.

1.05 Purchase Price Adjustments

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(a) At least two (2) Business Days prior to the Closing Date, the Company shall deliver to the Purchaser (i) a good faith estimate of Net Working Capital (the "Estimated Net Working Capital"), Cash on Hand (the "Estimated Cash on Hand"), Indebtedness (the "Estimated Indebtedness") and Seller Transaction Expenses (the "Estimated Seller Transaction Expenses") and the resulting calculation of the Estimated Cash Purchase Price as set forth in Section 1.02 and (ii) a schedule (the "Closing Schedule") setting forth (A) the Allocation Percentage for each Seller and (B) the number of Purchaser Shares to be issued to each Seller as the Stock Consideration. The Estimated Cash Purchase Price shall be prepared in accordance with the definitions set forth in this Agreement and using the accounting principles, practices and procedures, with consistent classifications, judgments and estimation methodology, as were used in preparation of the Latest Balance Sheet, to the extent consistent with GAAP.

(b) As promptly as possible, but in any event within seventy-five (75) days after the Closing Date, the Purchaser will deliver to the Sellers Representatives (i) a consolidated balance sheet of the Company and its Subsidiaries (the "Closing Balance Sheet") and (ii) a statement showing the Purchaser's calculation of Net Working Capital, Cash on Hand, Indebtedness and Seller Transaction Expenses, and the resulting calculation of the Final Cash Purchase Price (together with the Closing Balance Sheet, the "Preliminary Closing Statement"). The Closing Balance Sheet shall be prepared in accordance with the definitions set forth in this Agreement and using the accounting principles, practices and procedures, with consistent classifications, judgments and estimation methodology, as were used in preparation of the Latest Balance Sheet, to the extent consistent with GAAP. If the Preliminary Closing Statement is not delivered to the Sellers Representatives within seventy-five (75) days after the Closing Date, the Sellers Representatives may elect, at the Sellers Representatives' sole discretion, for the Company's estimates delivered pursuant to Section 1.05(a) to be deemed to constitute the finally determined amounts of Net Working Capital, Cash on Hand, Indebtedness and Seller Transaction Expenses, which election shall be final and binding upon, and non-appealable, by the parties hereto.

(c) During the thirty (30) days after delivery of the Preliminary Closing Statement, the Purchaser shall give the Sellers Representatives and its accountants reasonable access during normal business hours to review the Company's and its Subsidiaries' books and records, work papers supporting data and relevant personnel related to the preparation of the Preliminary Closing Statement (and, solely to the extent relevant thereto, to the Purchaser's books and records and work papers) for purposes of the Sellers Representatives' review of the Preliminary Closing Statement. The Sellers Representatives and its accountants may make inquiries of the Purchaser and its Subsidiaries and their respective accountants regarding questions concerning or disagreements with the Preliminary Closing Statement arising in the course of its review thereof, and the Purchaser shall use its, and shall cause its Subsidiaries to use their, commercially reasonable efforts to cause any such accountants to provide reasonable cooperation with and reasonably promptly respond to such inquiries; provided, however, that the independent accountants of Purchaser shall not be obligated to make any working papers available to Sellers Representatives unless the Sellers Representatives have signed a customary confidentiality and hold harmless agreement relating to such access to working papers in form and substance reasonably acceptable to such independent accountants. If the Sellers Representatives have any objections to the Preliminary Closing Statement, the Sellers Representatives shall deliver to the Purchaser a statement setting forth in reasonable detail its objections thereto and the basis for such objections (an "Objections Statement"). If an Objections Statement is not delivered to the Purchaser within forty-five (45) days after delivery of the Preliminary Closing Statement, the Preliminary Closing Statement shall be final, binding and non-appealable by the parties hereto. The Sellers Representatives and the Purchaser shall negotiate in good faith to resolve any such objections, and all such negotiations related thereto shall be treated as settlement negotiations under Rule 408 of the Federal Rules of Evidence (as in effect as of the date of this Agreement) and any applicable similar state rule, unless otherwise agreed in writing by the Sellers Representatives and the Purchaser. In the event that the Purchaser and the Sellers Representatives resolve in writing all such disagreements, the amounts for Net Working Capital, Indebtedness, Cash on Hand and Seller Transaction Expenses so agreed in writing by the Purchaser and the Sellers Representatives shall be final and binding upon, and non-appealable by, the parties hereto. In the event that the Purchaser and the Sellers Representatives are unable to reach a final resolution within fifteen (15) Business Days after the delivery of the Objections Statement, the Sellers Representatives and the Purchaser shall submit such dispute to KPMG LLP or such other nationally recognized certified public accounting firm as is reasonably acceptable to the Purchaser and the Sellers Representatives (other than Ernst & Young LLP and BDO USA, LLP) (the "Dispute Resolution Firm"). The Dispute Resolution Firm shall consider only those items and amounts which are identified in the Objections Statement as being items which the Sellers Representatives and the Purchaser are unable to resolve. The Dispute Resolution Firm's determination will be based solely on the definitions of Net Working Capital, Cash on Hand, Indebtedness and Seller Transaction Expenses, as applicable, contained in this Agreement. In resolving any disputed item, the Dispute Resolution Firm may not assign a value to any item greater than the greatest value for such item claimed by either party or less than the smallest value for such item claimed by either party (as set forth on the Preliminary Closing Statement or Objections Statement, as applicable). The Sellers Representatives and the Purchaser shall use their commercially reasonable efforts to cause the Dispute Resolution Firm (who shall be acting as an expert and not as an arbitrator) to resolve all disagreements as soon as practicable and in any event within thirty (30) days after the submission of any dispute. Further, the Dispute Resolution Firm's determination shall be based solely on the submissions by the Purchaser and the Sellers Representatives which are in accordance with the terms and procedures set forth in this Agreement (i.e., not on the basis of an independent review). Purchaser and the Sellers Representatives will cooperate in good faith with the Dispute Resolution Firm during the term of its engagement. The resolution of the dispute by the Dispute Resolution Firm shall be final, binding and non-appealable on the

parties hereto and their Affiliates. The costs and expenses of the Dispute Resolution Firm shall be allocated based upon the percentage which the portion of the contested amount not awarded to each party bears to the amount actually contested by such party in the presentation to the Dispute Resolution Firm. For example, if the Sellers Representatives submits an Objections Statement for $1,000, and if the Purchaser contests only $500 of the amount claimed by the Sellers Representatives, and if the Dispute Resolution Firm ultimately resolves the dispute by awarding the Sellers Representatives $300 of the $500 contested, then the costs and expenses of the Dispute Resolution Firm will be allocated 60% (i.e. 300/500) to the Purchaser and 40% (i.e., 200/500) to the Sellers Representatives (on behalf of the Sellers in accordance with their respective Allocation Percentages).

For purposes hereof, "Final Cash Purchase Price" (which, for the avoidance of doubt, does not include the Stock Consideration) means an aggregate amount as finally determined in accordance with this Section 1.05(b) equal to (i) $111,100,000, plus (ii) the amount by which Net Working Capital exceeds Target Working Capital (or minus the amount by which Target Working Capital exceeds Net Working Capital), plus (iii) the total amount of Cash on Hand, minus (iv) the outstanding amount of Indebtedness, minus (v) the unpaid Seller Transaction Expenses, in each case, as finally determined pursuant to this Section 1.05(b), as applicable.

(d) Post-Closing Adjustment Payment

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(i) If the Final Cash Purchase Price is greater than the Estimated Cash Purchase Price, the Purchaser shall promptly (but in any event within five (5) Business Days after the determination of the Final Cash Purchase Price in accordance with Section 1.05(b)) deliver to the Sellers Representatives (on behalf of the Sellers in accordance with their respective Allocation Percentages) the amount of such excess by wire transfer of immediately available funds to an account or accounts designated in writing by the Sellers Representatives. Immediately following payment of any amounts determined pursuant to Section 1.05(b) and this Section 1.05(d)(i) to be owing to the Sellers Representatives (on behalf of the Sellers in accordance with their respective Allocation Percentages), the Sellers Representatives and the Purchaser shall deliver joint written instructions to the Escrow Agent instructing the Escrow Agent to pay to the Sellers Representatives (on behalf of the Sellers in accordance with their respective Allocation Percentages) all remaining funds in the Working Capital Escrow Account, in accordance with the terms of the Escrow Agreement.

(ii) If the Final Cash Purchase Price is less than the Estimated Cash Purchase Price, the Sellers Representatives and the Purchaser shall promptly (but in any event within five (5) Business Days after the determination of the Final Cash Purchase Price in accordance with Section 1.05(b)) deliver joint written instructions to the Escrow Agent instructing the Escrow Agent to pay from the Working Capital Escrow Account (and, if the funds in the Working Capital Escrow Account are insufficient to cover such shortfall, then also from the Indemnity Escrow Account) to an account or accounts designed by the Purchaser the amount of such shortfall by wire transfer of immediately available funds to an account or accounts designated by the Purchaser. Immediately following payment of any amounts determined pursuant to Section 1.05(b) and this Section 1.05(d)(ii) to be owing to the Purchaser, the Sellers Representatives and the Purchaser shall deliver joint written instructions to the Escrow Agent instructing the Escrow Agent to pay to the Sellers Representatives (on behalf of the Sellers in accordance with their respective Allocation Percentages) all remaining funds (if any) in the Working Capital Escrow Account, in accordance with the terms of the Escrow Agreement. The Working Capital Escrow Account and the Indemnity Escrow Account shall be the Purchaser's sole recourse with respect to, and the exclusive source of funds for, any payments required to be made by the Sellers or the Sellers Representatives pursuant to Section 1.05(b) and this Section 1.05(d).

1.06 Sellers Representatives.

(a) Appointment. Each Seller and Optionholder hereby irrevocably constitutes and appoints each of David Durrett and Erik Dall, in their collective capacity as the Sellers Representatives, as his, her or its agent and attorney in fact with full power of substitution to act from and after the date hereof and to do any and all things and execute any and all documents on behalf of any Seller or Optionholder that may be necessary, convenient or appropriate to facilitate the consummation of the transactions contemplated by this Agreement and/or the Escrow Agreement, including but not limited to: (i) execution of the Escrow Agreement and other documents and certificates pursuant to this Agreement or the Escrow Agreement; (ii) except with respect to Proterra, receipt of payments under or pursuant to this Agreement or the Escrow Agreement and disbursement thereof to the Sellers and Optionholders, in accordance with this Agreement or the Escrow Agreement and subject to the terms hereof or thereof (with Purchaser hereby acknowledging that any payments under or pursuant to this Agreement or the Escrow Agreement that are owed or otherwise payable to Proterra shall be made directly to Proterra); (iii) receipt and forwarding of notices and communications pursuant to this Agreement or the Escrow Agreement; (iv) administration of the provisions of this Agreement and the Escrow Agreement; (v) giving or agreeing to, on behalf of any or all of the Sellers and/or Optionholders, any and all consents, waivers, amendments or modifications deemed by the Sellers Representatives, in its sole and absolute discretion, to be necessary or appropriate under this Agreement or the Escrow Agreement and the execution or delivery of any documents that may be necessary or appropriate in connection therewith; (vi) amending this Agreement or the Escrow Agreement or any of the instruments to be delivered to the Purchaser pursuant to this Agreement or the Escrow Agreement; (vii) taking actions the Sellers Representatives is expressly authorized to take pursuant to the other provisions of this Agreement or the Escrow Agreement; (viii) (A) dispute or refrain from disputing, on behalf of each Seller and Optionholder relative to any amounts to be received by such Seller or Optionholder under this Agreement, the Escrow Agreement or any

agreements contemplated hereby or thereby, any claim made by the Purchaser under this Agreement, the Escrow Agreement or other agreements contemplated hereby or thereby, (B) negotiate and compromise, on behalf of each Seller and Optionholder, any dispute that may arise under, and exercise or refrain from exercising any remedies available under, this Agreement, the Escrow Agreement or any other agreement contemplated hereby or thereby, and (C) execute, on behalf of each Seller and Optionholder, any settlement agreement, release or other document with respect to such dispute or remedy; and (ix) engaging attorneys, accountants, agents or consultants on behalf of the Sellers and Optionholders in connection with this Agreement, the Escrow Agreement or any other agreement contemplated hereby or thereby and paying any fees related thereto. Each Seller and Optionholder agrees that, with respect to any Indebtedness included in the calculation of Purchase Price, he, she or it will not contest or dispute the amount of such Indebtedness included if such amount has been approved for inclusion by the Sellers Representatives. For the avoidance of doubt, any obligations of the Sellers Representatives hereunder and any obligation on Purchaser with respect to the Sellers Representatives hereunder (including any obligation to deliver notices, payments, documents or information to the Sellers Representatives), shall only require such obligation to by satisfied by or with respect to either David Durrett or Erik Dall, not both, and any written consent of the Sellers Representatives shall be deemed effective if executed and delivered by either David Durrett or Erik Dall.

(b) Reliance. The Purchaser shall be fully protected in dealing with the Sellers Representatives under this Agreement and may rely upon the authority of the Sellers Representatives (or either of them) to act on behalf of the Sellers and Optionholders. Any payment by the Purchaser to the Sellers Representatives shall be considered a payment by the Purchaser to the Sellers and Optionholders. The appointment of the Sellers Representatives is coupled with an interest and shall be irrevocable by any Seller or Optionholder in any manner or for any reason. This power of attorney shall not be affected by the death, illness, dissolution, disability, incapacity or other inability to act of the principal pursuant to any applicable law.

(c) Acts of the Sellers Representatives. The Sellers Representatives may not resign from their capacity as the Sellers Representatives at any time without the Purchaser's prior written consent.

(d) Expenses and Liabilities. Any expenses or liabilities incurred by the Sellers Representatives in connection with the performance of their duties under this Agreement or the Escrow Agreement shall not be the personal obligation of the Sellers Representatives but shall be payable by the Sellers and Optionholders based on their respective Allocation Percentage; provided that the Sellers Representatives shall first satisfy any such expenses or liabilities by using funds from the Sellers Representatives Admin Expense Fund. The Sellers Representatives may from time to time submit invoices to the Sellers and Optionholders covering such expenses and/or liabilities and, upon the request of any Seller or Optionholder, shall provide the Sellers and Optionholders with an accounting of all expenses paid. The Sellers Representatives shall be entitled to hold, use and apply the funds in the Sellers Representatives Admin Expense Fund to reimburse or indemnify itself from and against any costs, fees, expenses and Losses, and to the extent that the Sellers Representatives determines (in their sole discretion) that no further amounts are necessary to be held by the Sellers Representatives, the Sellers Representatives shall distribute any such remaining amounts to the Sellers in accordance with their Allocation Percentages.

(e) Indemnification of the Sellers Representatives. The Sellers and Optionholders shall severally, but not jointly, indemnify and hold harmless, pro-rata based on each Seller's and Optionholder's Allocation Percentage, the Sellers Representatives from any and all losses, liabilities and expenses (including the reasonable fees and expenses of counsel) arising out of or in connection with the Sellers Representatives' execution and performance (solely in its capacity as the Sellers Representatives and not in its capacity as a Seller or Optionholder) of this Agreement, provided that the Sellers Representatives shall first recover any such losses, liabilities or expenses against the Sellers Representatives Admin Expense Fund prior to pursuing any individual Seller or Optionholder for indemnification pursuant hereto. All of the indemnitees, immunities and powers granted to the Sellers Representatives under this Agreement will survive the date of this Agreement or any termination of this Agreement.

(f) Limitation on Liability. Neither the Sellers Representatives nor any of their respective representatives will be liable to any Seller or Optionholder relating to the performance of the Sellers Representatives' duties and obligations under this Agreement, the Escrow Agreement or any other agreements contemplated herein or for any errors in judgment, negligence, oversight, breach of duty or otherwise, except to the extent it is finally determined by a court of competent jurisdiction that any liability, loss, damage, penalty, fine, cost or expense is actually incurred by such person as a proximate result of the gross negligence or willful misconduct of either of the Sellers Representatives (it being understood that any act done or omitted pursuant to the advice of legal counsel shall be conclusive evidence of the Sellers Representatives' good faith and reasonable judgment). Subject to the terms of this Agreement, the Sellers Representatives will be fully protected in acting upon any notice, statement or certificate believed by the Sellers Representatives to be genuine and to have been furnished by the appropriate Person and in acting or refusing to act on any matter unless such belief constitutes gross negligence or willful misconduct. The Sellers Representatives are serving in that capacity solely for purposes of administrative convenience, and are not liable in such capacity or any other capacity for any of the obligations of the Sellers or Optionholders hereunder, and Purchaser agrees that it will in no event look to the personal assets of the Sellers Representatives, acting in such capacity, for the satisfaction of any obligations to be performed by the Sellers, the Optionholders or any of their respective Subsidiaries.

(g) Payments. With respect to all amounts paid to the Sellers Representatives on behalf of the Sellers and Optionholders under this Agreement, the Sellers Representatives agree to promptly pay such amounts to the Sellers and Optionholders in accordance with their respective Allocation Percentages.

1.07 No Further Rights of Transfer. At and after the Effective Time, (a) each Seller shall cease to have any rights as an equityholder of the Company, except as otherwise required by applicable Law and except for the right of each Seller to deliver a duly executed and completed Letter of Transmittal in exchange for payment of the portion of the Merger Consideration such Stockholder is entitled to pursuant to this Agreement in the manner and at the times set forth herein and (b) no transfer of Shares shall be made on the transfer books of the Surviving Corporation. Immediately after the Effective Time, the stock ledger of the Company shall be closed.

1.08 Dissenting Shares. Notwithstanding any other provision of this Agreement to the contrary, any Shares that are outstanding immediately prior to the Effective Time and which are held by Sellers who shall not have voted in favor of the Merger or consented thereto in writing and who shall have properly demanded and are entitled to appraisal for such Shares in accordance with the Nevada Act shall not be converted into or represent the right to receive the applicable portion of the Merger Consideration. Such Sellers instead shall be entitled to receive payment of the appraised value of such Shares held by them in accordance with the provisions of the Nevada Act, solely to the extent such Sellers have perfected and not withdrawn and are otherwise entitled to appraisal in accordance with the Nevada Act. If any such Seller is not entitled to appraisal of such Seller's Shares in accordance with the Nevada Act or otherwise withdraws such Seller's demand for appraisal, such Seller shall be entitled to receive, without any interest thereon, the applicable portion of the Merger Consideration in the manner provided in this Article I. Any Shares for which appraisal rights have been properly exercised, and not subsequently withdrawn, lost or failed to be perfected, are referred to herein as "Dissenting Shares". The Company shall give Purchaser (x) prompt notice of any demands for appraisal pursuant to the Nevada Act received by the Company and withdrawals of such demands, and (y) the opportunity to participate in and, if Purchaser elects, direct, all negotiations and proceedings with respect to any such demands for appraisal. The Company shall not, except with the prior written consent of Purchaser, make any payment with respect to any such demands for appraisal or offer to settle or settle any such demands.

1.09 Withholding. Notwithstanding anything in this Agreement to the contrary, Purchaser or its designee and the Company and its Subsidiaries shall be entitled to withhold and deduct from the consideration otherwise payable pursuant to this Agreement such amounts as Purchaser or its designee or the Company and its Subsidiaries are required by law to deduct and withhold with respect to the making of such payment under the Code, applicable Treasury Regulations or any provision of federal, state, local or foreign Tax Law. To the extent that amounts are so withheld and paid over to the appropriate Tax authority, such amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding were made.

1.10 Taking of Further Action. If, at any time after the Effective Time, any further action is reasonably necessary or desirable to carry out the purposes of this Agreement and to vest the Surviving Corporation with full right, title and possession to all assets, property, rights, privileges, powers and franchises of Company and Merger Sub 1, Purchaser and the Surviving Corporation are fully authorized in their respective names to take, and will take, all such lawful and reasonably necessary or desirable action, so long as such action is not inconsistent with this Agreement.

ARTICLE II

CONDITIONS TO CLOSING

2.01 Conditions to the Purchaser's and Merger Sub 1's Obligations. The obligations of the Purchaser and Merger Sub 1 to consummate the transactions contemplated by this Agreement are subject to the satisfaction (or waiver by the Purchaser in writing) of the following conditions as of the Closing Date:

(a) (i) The representations and warranties in Article III (other than the representations and warranties in Section 3.04 and Section 3.16)) shall be true and correct in all respects at and as of the date of this Agreement and the Closing, in each case as though then made, except for representations and warranties that speak only as of a specific date or time, which shall be true and correct in all respects as of such date and time, without giving effect to any "materiality" or "Company Material Adverse Effect" qualifications set forth therein, in each case except where the failure of such representations and warranties to be true and correct have not had, and would not reasonably be expected to have, a Material Adverse Effect, (ii) the representations and warranties in Section 3.04 shall be true and correct in all respects at and as of the date of this Agreement and the Closing, in each case as though then made, except for representations and warranties that speak only as of a specific date or time, which shall be true and correct in all respects as of such date and time, and (iii) the representations and warranties in Section 3.16 shall be true and correct in all material respects at and as of the date of this Agreement and the Closing, in each case as though then made, except for representations and warranties that speak only as of a specific date or time, which shall be true and correct in all respects as of such date and time, without giving effect to any "materiality" or "Company Material Adverse Effect" qualifications set forth therein;

(b) the Sellers and the Company shall have performed in all material respects the covenants and agreements required to be performed by them under this Agreement at or prior to the Closing, provided, however, that the foregoing condition shall be deemed to have satisfied the requirements under Section 1.04(a)(i) if the Sellers Representatives have delivered to the Purchaser duly executed Letters of Transmittal and stock certificates evidencing the Shares from the number of Sellers constituting at least 98% of the issued and outstanding capital stock of the Company;

(c) the applicable waiting periods under the HSR Act shall have expired or been terminated;

(d) there shall not have been a Company Material Adverse Effect between the date hereof and the Closing Date;

(e) no Claim shall be pending by or before any Governmental Authority of competent jurisdiction wherein an unfavorable injunction, decision, ruling, judgment, decree or order would prohibit the performance of this Agreement or the consummation of any of the transactions contemplated hereby, declare unlawful the transactions contemplated by this Agreement or cause such transactions to be rescinded following consummation;

(f) the Escrow Agent and the Sellers Representatives shall have each executed and delivered signatures to the Escrow Agreement to the Purchaser;

(g) the Company shall have delivered to the Purchaser a certificate signed by an authorized officer of the Company in the form set forth on Exhibit B, dated as of the Closing Date, stating that the preconditions specified in subsections (a) and (b) above have been satisfied;

(h) the Company shall have delivered to the Purchaser a certificate, substantially in the form of Exhibit C attached hereto, duly completed pursuant to Sections 1.897-2(h) and 1.1445-2(c) of the Treasury Regulations, certifying that the Shares are not United States real property interests;

(i) each Optionholder shall have executed and delivered to the Purchaser, at least three (3) Business Days prior to the Closing, an Option Exercise Agreement substantially in the form of Exhibit D hereto;

(j) the Company shall have delivered to the Purchaser, in form satisfying the requirements of PCAOB AU Section 722, Interim Financial Information (SAS 100), no later than one (1) Business Day prior to the Closing Date, (i) unaudited consolidated balance sheets of the Company and its consolidated Subsidiaries as of June 30, 2016, and (ii) unaudited consolidated statements of operations, cash flows, and stockholders equity for each of the six (6)-month periods ended June 30, 2016 and June 30, 2015, together with the related notes thereto;

(k) each Restricted Seller shall have delivered to the Purchaser a duly executed copy of a Consulting Agreement in the form set forth on Exhibit E;

(l) the Company shall have delivered to Purchaser written evidence reasonably satisfactory to Purchaser of the termination of the Stockholders Agreement, dated as of May 27, 2014, by and between the Company and certain Sellers;

(m) the Company shall have completed the Pre-Closing Distributions; and

(n) the holders of a majority of the Shares shall have executed and delivered the Stockholder Consent, a copy of which has been delivered to Purchaser within one (1) Business Day after the date of this Agreement.

If the Closing occurs, all closing conditions set forth in this Section 2.01 which have not been fully satisfied as of the Closing shall be deemed to have been waived by the Purchaser.

2.02 Conditions to the Company's Obligations

. The obligations of the Company to consummate the transactions contemplated by this Agreement are subject to the satisfaction or waiver of the following conditions as of the Closing Date:

(a) (i) The representations and warranties in Article IV that contain any qualifications as to materiality or Purchaser Material Adverse Effect (or any correlative terms or qualifiers) shall be true and correct in all respects at and as of the date of this Agreement and the Closing, in each case as though then made, except for representations and warranties that speak only as of a specific date or time, which shall be true and correct in all respects as of such date and time, and (ii) the representations and warranties in Article IV that do not contain any qualifications as to materiality or Purchaser Material Adverse Effect (or any correlative terms or qualifiers) shall be true and correct in all material respects at and as of the date of this Agreement and the Closing, in each case as though then made, except for representations and warranties that speak only as of a specific date or time, which shall be true and correct in all material respects as of such date and time;

(b) the Purchaser and Merger Sub 1 shall have performed in all material respects the covenants and agreements required to be performed by it under this Agreement at or prior to the Closing;

(c) the applicable waiting periods under the HSR Act shall have expired or been terminated;

(d) no Claim shall be pending by or before any Governmental Authority of competent jurisdiction wherein an unfavorable injunction, decision, ruling, judgment, decree or order would prohibit the performance of this Agreement or the

consummation of any of the transactions contemplated hereby, declare unlawful the transactions contemplated by this Agreement or cause such transactions to be rescinded;

(e) the Escrow Agent and the Purchaser shall have each executed and delivered signatures to the Escrow Agreement to the Sellers Representatives;

(f) the Purchaser shall have delivered to the Sellers Representatives a certificate signed by an authorized officer of Purchaser in the form set forth as Exhibit F, dated as of the Closing Date, stating that the preconditions specified in subsections (a) and (b) above have been satisfied; and

(g) the Purchaser shall have delivered to the Sellers Representatives a copy of the Registration Rights Agreement in the form set forth as Exhibit H, duly executed by the Purchaser.

If the Closing occurs, all closing conditions set forth in this Section 2.02 which have not been fully satisfied as of the Closing shall be deemed to have been waived by the Sellers Representatives, on behalf of the Sellers.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as set forth in the schedules accompanying this Agreement (each a "Schedule" and, collectively, the "Disclosure Schedules"), in which capitalized terms used and not otherwise defined have the meanings given to them in this Agreement, and each section of which shall be deemed to incorporate by reference all information disclosed in any other section of the Disclosure Schedules if it is readily apparent on its face based on a plain reading of such information that such disclosure is applicable to such other section of the Disclosure Schedules, the Company hereby represents and warrants to the Purchaser and Merger Sub 1 as of the date hereof that:

3.01 Organization and Corporate Power

. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Nevada, the Company has all requisite corporate power and authority and all authorizations, licenses and permits necessary to own and operate its properties and assets, to carry on its businesses as now conducted and to execute and deliver this Agreement and carry out the transactions contemplated hereby (including the Merger), and the Company is qualified or licensed to do business in every jurisdiction in which its ownership of property or conduct of business requires it to qualify or be licensed, except where the failure to hold such power, authority, authorizations, licenses and permits would not reasonably be expected to result, individually or in the aggregate, in a Company Material Adverse Effect. The copies of the Company's certificate of incorporation and bylaws, including all amendments thereto prior to the date hereof, have been made available to the Purchaser and are true and complete. The Company is not in default under, or in violation of, any provision of its certificate of incorporation or bylaws.

3.02 Subsidiaries

. Except as set forth on Schedule 3.02, the Company does not own or hold the right to acquire any stock, partnership interest or joint venture interest or other equity ownership interest in any other Person, corporation, organization or entity or has any obligation to make any direct or indirect investment in, or capital contribution to, any Person. Each of the Company's Subsidiaries is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, has all requisite corporate, or other legal entity, as the case may be, power and authority and all authorizations, licenses and permits necessary to own its properties and to carry on its businesses as now conducted and is qualified to do business in every jurisdiction in which its ownership of property or the conduct of its businesses as now conducted requires it to qualify, except in each such case where the failure to hold such authorizations, licenses and permits or to be so qualified would not reasonably be expected to result, individually or in the aggregate, in a Company Material Adverse Effect. All of the capital stock of each of the Company's Subsidiaries is validly issued, fully paid and nonassessable and, except as set forth on Schedule 3.02, all of the capital stock of each such Subsidiary is owned, directly or indirectly, by the Company and is, or will be upon the Closing, free and clear of all Liens (other than Permitted Liens). The copies of each such Subsidiary's articles of incorporation and bylaws (or similar governing documents or operating agreements) and all amendments thereto prior to the date hereof have been made available to the Purchaser and are true and complete.

3.03 Authorization; No Breach; Valid and Binding Agreement. The execution, delivery and performance of this Agreement and all of the other agreements and instruments contemplated hereby to which the Company is a party and the consummation of the transactions contemplated hereby or thereby (including the Merger) have been duly and validly authorized by all requisite corporate action, in each case by the Company, and no other act or proceeding (corporate or otherwise) on the part of the Company is necessary to authorize the execution, delivery or performance of this Agreement, the other agreements contemplated hereby or the consummation of the transactions contemplated hereby or thereby (including the Merger), other than the Stockholder Consent and the filing of the Articles of Merger as required by the Nevada Act. Except as set forth on Schedule 3.03, the execution, delivery and performance by the Company of this Agreement and the other agreements and instruments contemplated hereby to which the Company is a party, and the consummation of the transactions contemplated hereby and thereby

(including the Merger), (a) do not and will not conflict with or result in any breach of, constitute a default under, or result in a violation of the provisions of the Company's or any of its Subsidiaries' certificate or articles of incorporation or bylaws (or equivalent organizational documents), (b) do not and will not conflict with or result in any breach of, constitute a default under, result in a violation of, result in the creation of any Lien (other than Permitted Liens) upon any assets of the Company or any of its Subsidiaries under, or require any authorization, consent, approval, exemption or other action by or notice to any court or other Governmental Authority under, any Contract to which the Company or any of its Subsidiaries is bound, or any law, statute, rule or regulation or order, judgment or decree to which the Company or any of its Subsidiaries is subject, except, in the case of this clause (b), where the failure of any of the foregoing to be true would not reasonably be expected to result in the Company or any of its Subsidiaries being required to make any material payment, forego any material right or benefit or incur a material liability or obligation. This Agreement and each of the other agreements and instruments contemplated hereby to which the Company is a party and that is required to by the terms of this Agreement to be executed on or before the date hereof, has been duly executed and delivered by the Company and, assuming that this Agreement and each of these other agreements and instruments has been duly executed, authorized and delivered by the Purchaser, Merger Sub 1 and Merger Sub 2, this Agreement and each of these other agreements and instruments constitutes a valid and binding obligation of the Company, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy laws, other similar laws affecting creditors' rights and general principles of equity affecting the availability of specific performance and other equitable remedies.

3.04 Capital Stock

. Schedule 3.04 sets forth the Company's authorized, issued and outstanding capital stock, including the Shares, as of the date hereof and as of the Closing Date. Each Seller is the record owner of, and has good title to, all of such outstanding Shares set forth opposite such Seller's name on Schedule 3.04 free and clear of all Liens other than restrictions on transfer imposed by federal or state securities laws. All of the Shares have been duly authorized and are validly issued, fully paid and nonassessable, and are not subject to, and were not issued in violation of, any preemptive rights or rights of first refusal. Except as set forth on Schedule 3.04, the Company does not have any other equity securities authorized, issued or outstanding, and there are no agreements, options, warrants or other rights or arrangements existing or outstanding which provide for the sale or issuance of any of the foregoing by the Company. Except as set forth on the attached Schedule 3.04, there are no outstanding (a) shares of capital stock or other equity interests or voting securities of the Company, (b) securities convertible or exchangeable into capital stock of the Company, (c) any options, warrants, purchase rights, subscription rights, preemptive rights, conversion rights, exchange rights, calls, puts, rights of first refusal or other contracts, agreements or obligations (contingent or otherwise) that could require the Company to issue, sell or otherwise cause to become outstanding or to acquire, repurchase, retire or redeem capital stock of the Company or (d) stock appreciation, phantom stock, profit participation or similar rights with respect to the Company. There are no bonds, debentures, notes or other Indebtedness of the Company outstanding having the right to vote (or convertible into, or exchangeable for, securities having the right to vote) on any matters on which any stockholder of the Company, in such stockholder's capacity as a stockholder of the Company, may vote.

3.05 Financial Statements.

(a) Schedule 3.05(a) consists of the Company's (i) audited consolidated balance sheets as of December 31, 2015 and December 31, 2014, and audited consolidated statements of operations, cash flows and stockholders' equity for the fiscal years then ended, together with all related notes thereto, accompanied by the report thereon of BDO USA, LLP and (ii) unaudited consolidated balance sheet as of May 31, 2016 (the "Latest Balance Sheet"), and unaudited consolidated statements of income and cash flows for the five (5)-month period then ended (the financial statements in clauses (i) and (ii), collectively, the "Financial Statements"). Except as set forth on Schedule 3.05(a), the Financial Statements have been based upon the information contained in books and records of the Company and its Subsidiaries, have been prepared in accordance with GAAP, consistently applied throughout the periods indicated, and present fairly in all material respects the consolidated financial condition and results of operations of the Company and its Subsidiaries as of the dates and for the periods referred to therein, subject in the case of the unaudited financial statements to (i) the absence of footnote disclosures and other presentation items and (ii) changes resulting from normal year-end adjustments (none of which footnote disclosures or changes would, individually or in the aggregate, reasonably be expected to be material).

(b) The Company and its Subsidiaries have no liabilities or obligations (whether matured or unmatured, known or unknown, fixed or contingent or otherwise required to be reserved against on a consolidated balance sheet of the Company and its Subsidiaries pursuant to GAAP), except (i) liabilities or obligations reflected on or reserved against on the Latest Balance Sheet, (ii) liabilities that were incurred after the date of the Latest Balance Sheet in the ordinary course of business consistent with past practice (none of which is a liability for a material breach of contract), (iii) liabilities arising under the executory portion of any Contract and (iv) liabilities set forth on Schedule 3.05(b).

(c) Except as set forth on Schedule 3.05(c), none of the Company or any of its Subsidiaries generates revenue, has a presence or carries on any Business outside of the United States.

3.06 Absence of Certain Developments

. Since December 31, 2015 to the date hereof, there has occurred no event, change, circumstance, occurrence, fact, condition, effect or development that has had a Company Material Adverse Effect. Except as set forth on the attached

Schedule 3.06 and except as expressly contemplated by this Agreement, since December 31, 2015 the Company and its Subsidiaries have conducted their businesses only in the ordinary course of business consistent with past practice, and neither the Company nor any of its Subsidiaries has:

(a) borrowed any amount or incurred or become subject to any Indebtedness or other material liabilities (other than liabilities incurred in the ordinary course of business consistent with past practice, liabilities under Contracts entered into in the ordinary course of business consistent with past practice or disclosed on the Disclosure Schedules);

(b) mortgaged, pledged or subjected to any material Lien, charge or other encumbrance, any material portion of its assets, except Permitted Liens;

(c) sold, assigned, transferred, leased or licensed or otherwise encumbered all or any material portion of its tangible assets, except in the ordinary course of business;

(d) (i) sold, assigned, transferred, leased, licensed, sublicensed or otherwise encumbered any Intellectual Property owned by the Company or its Subsidiaries or necessary for or used in the Business, except in the ordinary course of business, (ii) to the Company's knowledge, disclosed any proprietary confidential information or trade secrets to any Person that is not an Affiliate of the Company or any of its Subsidiaries, except pursuant to a valid and binding non-disclosure or confidentiality agreement or (iii) abandoned or permitted to lapse any Intellectual Property (including registrations and applications for registrations of Intellectual Property) necessary for or used in the Business;

(e) issued, sold or transferred any of its capital stock or other equity securities, securities convertible, exchangeable or exercisable into its capital stock or other equity securities or warrants, options or other rights to acquire its capital stock or other equity securities, or stock appreciation, phantom stock, profit participation or similar rights with respect to the Company, or any notes, bonds or debt securities;

(f) made any material capital investment in, or any material loan or advance to, or guaranty for the benefit of, any other Person (other than a Subsidiary of the Company);

(g) declared, set aside, or paid any dividend or made any non-cash distribution with respect to its capital stock or other equity securities or redeemed, purchased, or otherwise acquired any of its capital stock or other equity securities (including any warrants, options or other rights to acquire its capital stock or other equity securities), except for dividends or distributions made by the Company's Subsidiaries to their respective parents in the ordinary course of business;

(h) made any capital expenditures or commitments therefor in excess of $250,000, except for such capital expenditures or commitments therefor that are reflected in the Company's budget for the fiscal year ending December 31, 2016 previously provided to the Purchaser;

(i) made any material loan to, or entered into any other material transaction with, any of its directors, officers, and employees outside the ordinary course of business;

(j) (i) entered into any employment Contract with payments exceeding $150,000 per year or any collective bargaining agreement, or materially modified the terms of any such existing Contract or agreement or (ii) made or granted any bonus, retention, or severance payments or rights, or any wage, salary or other compensation increase to any employee or group of employees other than in the ordinary course of business consistent with past practice;

(k) made any other material change in employment terms (including compensation) for any of its directors or officers or for any employees having employment Contracts with annual payments exceeding $150,000 per year;

(l) discharged or satisfied any material Lien (other than any Permitted Lien) or paid any material obligation or material liability, other than current liabilities paid in the ordinary course of business consistent with past practice;

(m) except in the ordinary course of business, (i) made or granted any material increase in any benefits under an employee benefit plan, policy or arrangement, or (ii) materially amended or materially terminated any existing employee benefit plan, policy or arrangement or adopted any new material employee benefit plan, policy or arrangement;

(n) suffered any damage, destruction or casualty loss exceeding, in the aggregate, $250,000, whether or not covered by insurance;

(o) made any change in any accounting policies or principles other than changes consistent with GAAP;

(p) entered into any Material Contract or real property lease other than in the ordinary course of business;

(q) made or materially changed any Tax election, changed any annual accounting period, adopted or changed any accounting method, filed any amended Tax Return, entered into any "closing agreement" as described in Section 7121 of

the Code with respect to Taxes, settled any Tax claim or assessment, surrendered any right to claim a refund of Taxes, consented to any extension or waiver of the limitation period applicable to any Tax claim or assessment; or

(r) entered into any Contract, written or oral, to take any of the foregoing actions described in clauses (a) through (q) above.

3.07 Title to Properties

.

(a) Except as set forth on Schedule 3.07(a), the Company and each of its Subsidiaries owns good title to, or holds pursuant to valid and enforceable leases, all of the tangible personal property and tangible assets shown to be owned or leased by it on the Latest Balance Sheet, free and clear of all Liens, except for Permitted Liens, and such tangible personal property and tangible assets are all of the assets used in or necessary for the conduct of the Business (excluding the iron ore business) as it is being conducted as of the date hereof.

(b) The real property demised by the leases described on Schedule 3.07(b) (the "Leased Real Property") constitutes all of the real property leased, subleased or licensed by the Company and its Subsidiaries. Except as set forth on Schedule 3.07(b), the Leased Real Property leases are in full force and effect, and either the Company or one of its Subsidiaries holds a legal, valid and existing leasehold interest under each such lease, free and clear of all liens and encumbrances, except for Permitted Liens, and, to the Company's knowledge, the Leased Real Property leases are valid and binding obligations of the other party or parties thereto, enforceable in accordance with their terms, except as enforceability may be limited by bankruptcy laws, other similar laws affecting creditors' rights and general principles of equity affecting the availability of specific performance and other equitable remedies. The Company has made available to the Purchaser complete and accurate copies of each of the leases described on Schedule 3.07(b), and none of such leases have been modified in any material respect, except to the extent that such modifications are disclosed by the copies delivered or made available to the Purchaser. To the Company's knowledge, neither the Company nor any of its Subsidiaries is in default in any material respect under any of such leases and no event has occurred or circumstance exists which, with the delivery of notice, the passage of time or both, would constitute such a material breach or default, or permit the termination, modification or acceleration of rent under any Leased Real Property lease. The Company's or Subsidiary's possession and quiet enjoyment of the Leased Real Property under the Leased Real Property leases has not been disturbed and there are no ongoing disputes with respect to any Leased Real Property lease. No security deposit or portion thereof deposited with respect to any such Leased Real Property lease has been applied in respect of a breach or default under any such Leased Real Property lease which has not been redeposited in full. Neither the Company nor any Subsidiary has subleased, licensed or otherwise granted any Person the right to use or occupy such property subject to such Leased Real Property lease or any portion thereof. Neither the Company nor any Subsidiary owes, or will owe in the future, any brokerage commissions or finder's fees with respect to such Leased Real Property lease.

(c) The Owned Real Property described on Schedule 3.07(c) constitutes all of the real property owned by the Company and its Subsidiaries. Schedule 3.07(c) sets forth the address and description of each Owned Real Property. With respect to each Owned Real Property: (i) the Company or Subsidiary (as the case may be) has good indefeasible fee simple title to such Owned Real Property, free and clear of all liens and encumbrances, except Permitted Liens, (ii) except as set forth in Schedule 3.07(c), neither the Company nor any Subsidiary has leased or, other than pursuant to any Permitted Lien, otherwise granted to any Person (other than the Company or its Subsidiaries, as applicable) the right to use or occupy such Owned Real Property or any portion thereof; and (iii) other than the right of Purchaser pursuant to this Agreement, there are no outstanding options, rights of first offer or rights of first refusal to purchase such Owned Real Property or any portion thereof or interest therein. Neither the Company nor any Subsidiary is a party to any agreement or option to purchase any real property or interest therein.

(d) The Real Property comprises all of the real property used in the Business (excluding the iron ore business).

(e) All certificates of occupancy, permits, licenses, franchises, approvals and authorizations (collectively, the "Real Property Permits") of all Governmental Authorities, board of fire underwriters, associations or any other entities having jurisdiction over the Real Property, which are required to use or occupy the Real Property or operate the Business as currently conducted, have been issued and are in full force and effect, except for any Real Property Permit the failure of which to be issued or to be in full force and effect would not reasonably be expected to result in a Company Material Adverse Effect. Schedule 3.07(e) lists all material Real Property Permits held by the Company or any Subsidiary with respect to each Real Property. The Company has delivered or otherwise made available to Purchaser true and complete copies of all Real Property Permits obtained by the Company or any of its Subsidiaries with respect to the Business (excluding the iron ore business). The Company has not received any written notice from any Governmental Authority or other entity having jurisdiction over the Real Property threatening a suspension, revocation, modification or cancellation of any Real Property Permit and, to the Company's knowledge, there is no reasonable basis for the issuance of any such notice or the taking of any such action.

(f) Each parcel of Real Property has direct access to a public street adjoining the Real Property, and such access is not dependent on any land or other real property interest which is not included in the Real Property. None of the

Improvements or any portion thereof is dependent for its access, use or operation on any land, building, improvement or other real property interest which is not included in the Real Property.

(g) To the Company's knowledge, all water, oil, gas, electrical, steam, compressed air, telecommunications, sewer, storm and waste water systems and other utility services or systems for the Real Property have been installed and are operational and reasonably sufficient for the operation of the Business as currently conducted thereon, and all hook-up fees or other similar fees or charges have been paid in full.

3.08 Tax Matters

. Except as set forth on Schedule 3.08:

(a) The Company and its Subsidiaries have timely filed all income and other material Tax Returns which are required to be filed by them. Each such Tax Return has been prepared in compliance with all applicable Laws, and all such Tax Returns are true, correct and complete in all material respects. All income and other material Taxes (whether or not shown as due and owing by the Company and the Subsidiaries on any Tax Returns) that are due and payable have been timely paid. Each of the Company and its Subsidiaries has properly withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any shareholder, employee, creditor, independent contractor, or other third party.

(b) There are no pending audits, disputes, written claims or other information requests asserting any deficiency in Taxes or any proposed adjustment of any Taxes or Tax Returns with respect to the Company or any of its Subsidiaries.

(c) Neither the Company nor any of its Subsidiaries has waived any statute of limitations beyond the date hereof in respect of any Taxes or agreed to any extension of time beyond the date hereof with respect to a Tax assessment or deficiency.

(d) Neither the Company nor any of its Subsidiaries is the beneficiary of any extension of time within which to file any Tax Return.

(e) Neither the Company nor any of its Subsidiaries has distributed stock of another Person, or has had its stock distributed by another Person, in a transaction that was purported or intended to be governed in whole or in part by Code §355 or Code §361.

(f) Neither the Company nor any of its Subsidiaries has participated in a "listed transaction" within the meaning of Treas. Reg. § 1.6011-4.

(g) The Company is treated as a corporation for federal income tax purposes under Treasury Regulation 301.7701-3.

(h) There are no Liens for Taxes (other than Taxes not yet due and payable) upon any of the assets of the Company or any Subsidiary.

(i) Neither the Company nor any Subsidiary is a party to any agreement, contract, arrangement or Benefit Plan that has resulted or could result, separately or in the aggregate, in the payment of any "excess parachute payment" within the meaning of Section 280G of the Code (or any corresponding provision of state, local or foreign Tax law) and any U.S. Department of Treasury or Internal Revenue Service guidance issued thereunder in connection with the transactions contemplated hereby (either alone or in combination with the occurrence of any other event).

(j) Neither the Company nor any of its Subsidiaries has any actual or potential obligation to reimburse or otherwise ''gross-up'' any Person for any Taxes as a result of Sections 280G or 4999 of the Code.

(k) Neither the Company nor any Subsidiary (A) has been a member of an Affiliated Group filing a combined, consolidated, or unitary Tax Return (other than a group the members of which are the Company and its Subsidiaries or any combination thereof) or (B) has any liability for the Taxes of any Person (other than the Company or any Subsidiary) under Treasury Regulation §1.1502-6 or any analogous or similar state, local or foreign law or regulation, or as a transferee or successor.

(l) The Company is not and has not been a United States Real Property Holding Corporation within the meaning of Code §897(c)(2) during the applicable period specified in Code §897(c)(1)(A)(ii).

(m) Each agreement, contract, arrangement or Benefit Plan of the Company and its Subsidiaries that is a "nonqualified deferred compensation plan" subject to Section 409A of the Code to which the Company or any of its Subsidiaries is a party (collectively, a "Plan") complies with and has been maintained in accordance with the requirements of Section 409A of the Code and any U.S. Department of Treasury or Internal Revenue Service guidance issued thereunder and no amounts under any such Plan is or has been subject to any interest or additional Tax set forth under Section 409A(a)(1)(B) of the Code.

(n) Neither the Company nor any of its Subsidiaries has any actual or potential obligation to reimburse or otherwise ‘‘gross-up’’ any Person for any Taxes as a result of Section 409A of the Code.

(o) Neither the Company nor any Subsidiary of the Company owns an interest, directly or indirectly, in any joint venture, partnership, limited liability company, association, or other entity that is treated as a partnership for U.S. federal, state or local income Tax purposes.

(p) Since January 1, 2011, the Company has not received written notice of any Claim by a taxing authority in a jurisdiction where the Company or any Subsidiary does not file Tax Returns that the Company or any such Subsidiary, respectively, is or may be subject to taxation by that jurisdiction.

(q) None of the Company or any of its Subsidiaries will be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) beginning after the Closing Date as a result of any (i) change in method of accounting for a taxable period ending on or prior to the Closing Date; (ii) “closing agreement” as described in Section 7121 of the Code (or any corresponding or similar provision of state, local or foreign income Tax law) executed on or prior to the Closing Date; (iii) installment sale or open transaction disposition made on or prior to the Closing Date; (iv) prepaid amount received on or prior to the Closing Date other than in the ordinary course of business, (v) election pursuant to Section 108(i) of the Code; (vi) deferred intercompany gain or any excess loss account described in Treasury Regulations under Code Section 1502 (or any corresponding or similar provision of state, local or foreign Law); or (vii) use of an improper method of accounting for a taxable period on or prior to the Closing Date.

(r) None of the Company or any of its Subsidiaries is a party to or bound by any Tax allocation or Tax sharing agreement (other than (i) any customary agreements with customers, vendors, lenders, lessors entered into in the ordinary course of business and the primary purpose of which is not related to Taxes and (ii) property Taxes payable with respect to properties leased), and none has any current or potential contractual obligation to indemnify any other Person with respect to Taxes.

(s) Following the Second Merger, the Second Surviving Corporation will hold at least ninety percent (90%) of the fair market value of the Company’s net assets and at least seventy percent (70%) of the fair market value of the Company’s gross assets held immediately prior to the Transactions (taking into account any assets distributed pursuant to the Pre-Closing Distributions). For purposes of this Section 3.08(s), amounts paid by the Company to stockholders who receive cash or other property, amounts used by the Company to pay Seller Transaction Expenses, amounts paid by the Company to redeem stock, securities, warrants or options of Company as part of any overall plan of which the Transactions are a part, and amounts distributed by the Company to stockholders of the Company (except for regular, normal dividends) as part of an overall plan of which the Transactions are a part, in each case, will be treated as constituting assets of Company immediately prior to the Effective Time.

(t) None of the Company or its Subsidiaries has any knowledge that any stockholder of the Company has a plan or intention to, following the Transactions, sell, by means of a sale, exchange, transfer, pledge, disposition or any other transaction which results in a transfer of risk of ownership or a direct or indirect disposition, any Purchaser Common Stock to Purchaser or any person that is related to Purchaser within the meaning of Treasury Regulation Section 1.368-1(e)(3).

(u) No assets of the Company or its Subsidiaries have been sold, transferred or otherwise disposed of so as to prevent the Company and its Subsidiaries from continuing its “historic business” or from using a “significant portion” of its “historic business assets” in a business following the Transactions, as such terms are defined in Treasury Regulation Section 1.368-1(d).

(v) None of the Company or its Subsidiaries has knowingly taken or agreed to take any action, has knowingly failed to take any action, or has knowledge of any fact, agreement, plan or other circumstance that could reasonably be expected to prevent or impede the Transactions from qualifying as a reorganization under Code Section 368(a)(1)(A) by reason of Code Section 368(a)(2)(D).

The representations and warranties contained in Section 3.05, Section 3.06(q), this Section 3.08, Section 3.13 and Section 3.16 are the only representations and warranties being made by the Company with respect to Taxes related to the Company or any of its Subsidiaries or this Agreement or its subject matter, and no other representation or warranty contained in any other section of this Agreement shall apply to any such Tax matters.

3.09 Contracts and Commitments.

(a) Except as set forth on Schedule 3.09(a), neither the Company nor any of its Subsidiaries is party to or bound by any written:

(i) (A) collective bargaining agreement or contract with any trade union or other labor organization or (B) Contract with any current or former employee, director or independent contractor providing for future severance, change in control, retention, stay-pay or similar payments;

(ii) written bonus, pension, profit sharing, stock option, employee stock purchase, retirement or other form of deferred compensation plan, other than as described in Section 3.13(a) or the Disclosure Schedules relating thereto;

(iii) (A) Contract for the employment of any officer, individual employee or other person on a full-time, part-time or other basis providing for fixed compensation in excess of $150,000 per annum (other than standard offer letters for at-will employment) or relating to loans to officers, directors or Affiliates pursuant to which it has any material obligation or (B) Contract with any independent contractor or consultant providing for fixed compensation in excess of $150,000 per annum;

(iv) (A) agreement or indenture relating to the borrowing of money or to mortgaging, pledging or otherwise placing a Lien on any material portion of their assets, or (B) Contract under which it has advanced or loaned any other Person, that is not an Affiliate of the Company, amounts exceeding, in the aggregate, $100,000;

(v) guaranty of any obligation for Indebtedness or other material guaranty;

(vi) settlement, conciliation or similar agreement with any Governmental Entity or pursuant to which the Company or its Subsidiaries will be required, after the date of this Agreement, to satisfy any monetary or material non-monetary obligations;

(vii) lease or agreement under which it is lessee or lessor of, or holds or operates, any material personal property owned by any other party, or permits any third party to hold or operate any material personal property owned or controlled by it, in each case for which the annual rental exceeds $150,000;

(viii) agreements relating to any completed material business acquisition by the Company or any of its Subsidiaries within the last three (3) years or pursuant to which the Company or any of its Subsidiaries has remaining obligations or liabilities;

(ix) Contract pursuant to which (A) the Company or any of its Subsidiaries are licensed or otherwise permitted by a third party to use any Intellectual Property owned by such third party (other than non-exclusive licenses to the Company or any of its Subsidiaries of commercially available "off the shelf" software that is not material to the Business), or (B) any third party is licensed or otherwise permitted to use any Intellectual Property owned or held exclusively by the Company or any of its Subsidiaries;

(x) Contract which limits or prohibits the Company or any of its Subsidiaries from competing or freely engaging in business anywhere in the world;

(xi) (A) joint venture, partnership or similar agreement related to the creation or development of Intellectual Property by or for the Company or any of its Subsidiaries, or (B) Contract providing for the assignment, ownership, creation or development of any Intellectual Property;

(xii) (A) Contract that limits the freedom or right of the Company or any of its Subsidiaries to use Intellectual Property owned by the Company or any of its Subsidiaries, (B) any settlement contract, consent-to-use or settlement agreement relating to Intellectual Property, or (C) any Contract granting any exclusive rights to any third party with respect to the Intellectual Property owned by the Company or any of its Subsidiaries;

(xiii) Contract which is not terminable by it upon less than sixty (60) days' notice without penalty or additional liability and involves payments in excess of $250,000 annually; or

(xiv) any other Contract which involves a consideration in excess of $500,000 annually.

(b) The Company has delivered or made available to the Purchaser true and correct copies of all written Contracts and an accurate description of all oral arrangements or Contracts that are required to be set forth on Schedule 3.09(a), together with all material amendments, waivers or other changes thereto.

(c) Except as set forth on Schedule 3.09(c), (i) each of the Company and its Subsidiaries has performed in all material respects all material obligations required to be performed by it and is not in material default under, in material breach of, nor in receipt of any written Claim of material default or material breach under, any Material Contract; (ii) no event has occurred which, with the passage of time or the giving of notice or both, would result in a material default or material breach by the Company or any of its Subsidiaries under any Material Contract; and (iii) as of the date hereof, to the knowledge of the Company there is no material breach or threatened material breach by (or non-ordinary course notice of non-renewal or termination from (other than any automatic non-renewals or terminations in accordance with such Material Contract's terms)) the other parties to any Material Contract. Except for those that have terminated or expired in accordance with their terms, all of the Contracts and plans set forth on Schedule 3.09(a) or required to be set forth on Schedule 3.09(a) (collectively, the "Material Contracts") are valid and in full force and effect and constitute legal, valid and binding obligations of the Company or such Subsidiary, and are enforceable against the Company or such Subsidiary in accordance with their respective terms, and, to the

Company's knowledge, constitute legal, valid and binding obligations of the other party or parties thereto, enforceable against such party or parties in accordance with their respective terms, except as enforceability may be limited by bankruptcy laws, other similar laws affecting creditors' rights and general principles of equity affecting the availability of specific performance and other equitable remedies.

3.10 Intellectual Property

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(a) All of the patents, registered trademarks, registered service marks, registered copyrights, Internet domain names, and applications for any of the foregoing owned or purported to be owned by the Company and its Subsidiaries are set forth on Schedule 3.10. The Company and its Subsidiaries exclusively own and possess all right, title and interest in and to the Intellectual Property required to be set forth on Schedule 3.10, and such Intellectual Property is valid, enforceable, unexpired and subsisting and free and clear of all Liens, except for Permitted Liens. There are no claims pending or, to the Company's knowledge, threatened in writing against the Company or any of its Subsidiaries in the past six (6) years with respect to infringement, misappropriation or violation of any third party Intellectual Property. Neither the Company nor any of its Subsidiaries, nor the operation of the Business, infringes, misappropriates or violates, or has infringed, misappropriated or violated, the Intellectual Property of any third party. To the Company's knowledge, no third party is currently infringing, misappropriating or violating any Intellectual Property owned by the Company or any of its Subsidiaries.

(b) The Company and its Subsidiaries own or possess sufficient rights pursuant to a valid and enforceable written license agreement to use all Intellectual Property necessary for or used in the Business as presently conducted, and all such Intellectual Property shall continue to be owned or otherwise possessed by the Company and its Subsidiaries or available for use on substantially similar terms and conditions by the Company and its Subsidiaries upon the completion of the Closing. The Company and its Subsidiaries have taken commercially reasonable measures to maintain, enforce and protect its rights in the Intellectual Property owned by the Company and its Subsidiaries.

(c) The Company and its Subsidiaries have taken commercially reasonable steps, including reasonable security measures, to protect and maintain the value of all Intellectual Property owned by the Company and its Subsidiaries, including the confidentiality of any trade secrets. Except as set forth in Schedule 3.10, all current and former employees, independent contractors, and other Persons who have been involved in the development of any Intellectual Property for the benefit of the Company or any of its Subsidiaries, have executed and delivered to the Company and its Subsidiaries a valid and enforceable agreement (i) providing for the nondisclosure by such Person of any Confidential Information of the Company and its Subsidiaries, and (ii) providing for the assignment (by way of a present grant of assignment) by such Person to the Company and its Subsidiaries of any Intellectual Property arising out of such Person's employment by, engagement by, or contract with the Company and its Subsidiaries. To the Company's knowledge, no such current or former employees, independent contractors, or other Persons are in breach of any such agreements.

(d) The information technology systems used in the Business, including all computer hardware, software, firmware, process automation and telecommunications systems, operate and perform in accordance with their documentation and functional specifications, in all material respects, and otherwise as required by the Company and its Subsidiaries. There have been no failures, breakdowns, continued substandard performance, or other adverse events affecting such information technology systems that have caused any substantial disruption of or interruption in and to the use of such information technology systems for more than one Business Day. The Company and its Subsidiaries have implemented commercially reasonable data backup, data storage, system redundancy, and disaster avoidance and recovery procedures, as well as a commercially reasonable business continuity plan.

3.11 Litigation

. Except as set forth on Schedule 3.11, there are no Claims (and, during the two (2) year period preceding the date of this Agreement, there have not been any Claims) pending or, to the Company's knowledge, threatened against the Company or any of its Subsidiaries (including, in each case, any Claims with respect to the transactions contemplated hereby or in which it is sought to restrain or prohibit or to obtain damages or other relief in connection with the transactions contemplated hereby), or pending or threatened by the Company or any of its Subsidiaries against any Person, at law or in equity, or before or by any Governmental Authority or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, in each case which if determined adversely to the Company or any of its Subsidiaries would reasonably be expected to be material to the Company and its Subsidiaries, taken as a whole. Neither the Company nor any of its Subsidiaries is subject to or in default under any outstanding judgment, Order or decree of any court or Governmental Authority.

3.12 Governmental Consent.

Except (a) as set forth on the attached Schedule 3.12(a), (b) as required under the HSR Act and (c) for the filing of the Articles of Merger in connection with the Merger and the filing of the Certificate of Merger and Second Articles of Merger in connection with the Second Merger, no material Permit of, or declaration to or filing with, any Governmental Authority or regulatory authority is required in connection with any of the execution, delivery or performance of this Agreement by the

Company or the consummation by the Company of any other transaction contemplated hereby. Schedule 3.12(b) contains a complete list of all Permits, other than the Real Property Permits, issued to the Company or any of its Subsidiaries that are currently used by the Company or any of its Subsidiaries in connection with the operation of the Business, except for such immaterial Permits that would be readily obtainable by any qualified applicant without any undue burden or material cost in the event of any lapse, termination, cancellation or forfeiture thereof, and such Permits, together with the Real Property Permits, represent all Permits required for the operation of the Business (excluding the iron ore business) as presently conducted by the Company and its Subsidiaries. The Company and its Subsidiaries are in compliance in all material respects with all such Permits identified on Schedule 3.12(b), all of which are in full force and effect, and there are no pending or, to the Company's knowledge, threatened limitations, terminations, expirations or revocations of any material Permits other than such limitations, terminations, expirations or revocations that would not be material to the Business. During the three (3) years prior to the date hereof, no written notices have been received by the Company or any of its Subsidiaries alleging the failure to hold any material Permits.

3.13 Employee Benefit Plans.

(a) Schedule 3.13(a) contains a true and complete list of all "pension plans" (as defined under Section 3(2) of ERISA) and "welfare plans" (as defined under Section 3(1) of ERISA) and other bonus or incentive compensation, deferred compensation, severance, retention, or termination pay, retirement, profit-sharing, change in control, transaction-based payment, performance award, equity or equity-related award, health and welfare benefit plans, programs, policies, practices, agreements and arrangements and other material employee benefit plans, programs, policies, practices, agreements and arrangements, regardless of whether such plan is subject to ERISA, which the Company or any of its Subsidiaries maintains, participates in, contributes to, or is required to contribute to, or with respect to which the Company or any Subsidiary has or may have any current liability or obligation (collectively, the "Benefit Plans").

(b) Each of the Benefit Plans that is intended to be qualified under Section 401(a) of the Code is subject to a favorable determination letter from the Internal Revenue Service or is a prototype or other plan that is entitled to rely on an opinion or advisory letter issued by the Internal Revenue Service to the plan sponsor regarding qualification of the form of the prototype or other plan, and to the Company's knowledge, nothing has occurred that would reasonably be expected to adversely affect such qualified status. Each Benefit Plan has been funded, administered and maintained, in form and in operation, in all material respects in accordance with its terms and with all applicable Laws, including but not limited to the requirements of the Code and ERISA. No "prohibited transaction," within the meaning of Section 4975 of the Code or Sections 406 and 407 of ERISA, and not otherwise exempt under Section 408 of ERISA, has occurred with respect to any Benefit Plan that would reasonably be expected to result in any material liability. There are no current actions, suits, or Claims pending, or, to the Company's knowledge, threatened (other than routine claims for benefits) with respect to any Benefit Plan. There are no audits, inquiries, or proceedings pending or, to the Company's knowledge, threatened in writing by any Governmental Authority with respect to any Benefit Plan.

(c) With respect to each Benefit Plan, all required contributions have been made on a timely basis in accordance with applicable Laws.

(d) The Company has made available to the Purchaser true and complete copies of, in each case to the extent applicable, (i) all documents embodying each Benefit Plan, including, without limitation, all plan documents and amendments thereto, related trust documents, and group insurance policies and Contracts, (ii) the most recent determination, opinion, notification, or advisory letter received from the Internal Revenue Service for each Benefit Plan, (iii) the most recent Form 5500 annual report for each Benefit Plan, (iv) the most recent summary plan description and all summary(ies) of material modifications thereto for each Benefit Plan, (v) the most recent plan years' compliance and discrimination tests for each Benefit Plan, (vi) all material correspondence with a Governmental Authority with respect to each Benefit Plan dated within the past thirty-six (36) months and (vii) the Code Section 280G analysis and any waivers, consents, disclosures, and other documents prepared in connection with the actions described in Section 5.06 hereof performed in connection with the transactions contemplated by this Agreement.

(e) Neither the Company nor any of its ERISA Affiliates maintains, sponsors, contributes to or has any current or contingent liability with respect to, (i) any employee benefit plan that is subject to Title IV of ERISA or Section 412 of the Code or (ii) any "multiemployer plan" (as such term is defined under Section 3(37) of ERISA). Except as set forth on Schedule 3.13(e), no Benefit Plan provides, and neither the Company nor any of its Subsidiaries has any actual or potential obligation to provide, post-employment health, life or other welfare benefits, other than as required under Section 4980B of the Code or any similar applicable Law for which the covered individual pays the full cost of coverage.

(f) Except as expressly provided otherwise under this Agreement or as set forth on Schedule 3.13(f), the execution of this Agreement and the consummation of the transactions contemplated hereby will not (either alone or in combination with the occurrence of any other event) constitute an event under any Benefit Plan that will result in any payment (whether severance pay or otherwise), acceleration, forgiveness of Indebtedness, vesting, distribution, increase in benefits, forfeiture or obligation to fund benefits thereunder.

3.14 Insurance

. Schedule 3.14 contains a true and complete list as of the date of this Agreement of all material insurance policies to which the Company or any of its Subsidiaries is a party or which provide coverage to or for the benefit of or with respect to the Company, its Subsidiaries or any director or employee of the Company or its Subsidiaries in his or her capacity as such (the "Insurance Policies"), indicating in each case the type of coverage, name of the insured, the insurer, the premium, the expiration date of the policy and the amount of coverage. The Company has made available to the Purchaser true and complete copies of all such Insurance Policies. All Insurance Policies maintained by the Company and each of its Subsidiaries are in full force and effect and, to the knowledge of the Company, neither the Company nor any of its Subsidiaries is in material default with respect to its obligations under any such Insurance Policies. The Company and the Company's Subsidiaries are current in all premiums due under the Insurance Policies and have otherwise complied in all material respects with all of their material obligations under each Insurance Policy. The Company or one of the Company's Subsidiaries, as applicable, has given timely notice to the insurer of all material Claims known to the Company that may be insured by any such Insurance Policy.

3.15 Compliance with Laws

. Except as described on Schedule 3.15, the Company and each of its Subsidiaries is, and during the three (3) years prior to the date hereof has been, in compliance in all material respects with all applicable Laws and regulations of foreign, federal, state and local governments and all agencies thereof, except where the failure to comply would not be material to the Business or the operations of the Company. During the three (3) years prior to the date hereof, no written request for information or audits (other than in the ordinary course of business) and no written Claims have been received by, and to the Company's knowledge, no Claims have been filed against, the Company or any of its Subsidiaries alleging material noncompliance with any Laws.

3.16 Environmental Compliance and Conditions

. Except as set forth on Schedule 3.16:

(a) The Company and its Subsidiaries are in compliance, and have for the past three (3) years complied, in all material respects with all Environmental Laws, which compliance has included obtaining, maintaining, and complying with all Permits required under Environmental Laws for the occupation of the Leased Real Property and the operation of the Business.

(b) None of the Company or any of its Subsidiaries has received in the past three (3) years, or prior to such time if not fully settled and resolved, any notice, report, Order, directive, or other information regarding any actual or alleged material violations of, or material liabilities arising under, Environmental Laws.

(c) None of the Company or any of its Subsidiaries has (i) manufactured, distributed, treated, stored, arranged for or permitted the disposal of, transported, handled, released, or exposed any Person to, any Hazardous Substance, or (ii) owned or operated any property or facility (including the Leased Real Property) which is or has been contaminated by any Hazardous Substance in the case of clauses (i) and (ii) so as to give rise to any material liability pursuant to Environmental Laws.

(d) Each of the Company and its Subsidiaries has (i) in the amounts and forms required by any Environmental Laws, obtained all performance bonds, surety bonds, insurance and any other financial assurances required under Environmental Laws for land reclamation or otherwise, and (ii) obtained or acquired all mining, surface or other rights necessary for access, water, plant sites, tailings disposal, waste dumps, ore dumps, abandoned heaps, or ancillary facilities required under Environmental Laws or other Laws in connection with the Business, and all such rights are sufficient in scope and substance for the operation of the Business.

(e) None of the Company or any of its Subsidiaries has designed, manufactured, sold, marketed, installed, repaired or distributed products or other items containing any Hazardous Substance so as to give rise to any material liability under Environmental Laws.

(f) None of the Company or any of its Subsidiaries has assumed, undertaken, become subject to, or provided an indemnity with respect to any material liability of any other Person pursuant to Environmental Laws.

(g) The Company has made available to the Purchaser all environmental audits, assessments, and reports and all other environmental documents materially bearing on environmental, health or safety conditions of the Real Property and the Business or relating to the current and former operations and facilities (including without limitation the Leased Real Property) of the Company and its Subsidiaries that are in its possession or under its reasonable control.

The representations and warranties contained in Section 3.05, Section 3.06, Section 3.08, Section 3.09, Section 3.11, Section 3.12, Section 3.14, Section 3.15 and this Section 3.16 are the only representations and warranties being made by the Company with respect to environmental matters related to the Company or any of its Subsidiaries or this Agreement or its subject matter, and no other representation or warranty contained in any other section of this Agreement shall apply to any such environmental matters.

3.17 Affiliated Transactions

. Except as set forth on Schedule 3.17, no officer, director, shareholder or Affiliate of the Company or any of its Subsidiaries or, to the Company's knowledge, any individual in any officer's or director's immediate family or any legal entity in which any such Person has the power to direct or control the actions of such legal entity, is a party to any Contract with the Company or any of its Subsidiaries or has any material interest in any assets, rights or property owned, licensed, leased or used by the Company or any of its Subsidiaries, other than employment-related Contracts. Schedule 3.17 contains a description of all material intercompany services provided to or on behalf of the Company or any of its Subsidiaries by any Seller or any Affiliates of the Sellers (other than the Company and its Subsidiaries).

3.18 Employees.

(a) Except as set forth on Schedule 3.18(a), (i) neither the Company nor any of its Subsidiaries has experienced any material grievances, claims of unfair labor practices, arbitrations, or other material collective bargaining disputes within the past three (3) years, nor are any threatened in writing, (ii) within the past three (3) years, neither the Company nor any of its Subsidiaries has committed any unfair labor practice, (iii) no employees of the Company or any of its Subsidiaries are represented by any union, labor organization, or works council in connection with such employment, (iv) to the Company's knowledge, no union organizing activities are underway or threatened with respect to any of the employees of the Company or any of its Subsidiaries and no such activities have occurred within the past five (5) years, (v) to the Company's knowledge, the Business is not currently subject to any union, works council or other labor organization demand for recognition, (vi) there are no representation proceedings or petitions seeking a representation proceeding presently pending or, to the Company's knowledge, threatened to be brought or filed with the National Labor Relations Board or other labor relations tribunal, (vii) no collective bargaining agreements or other types of agreements with any union, labor organization, or works council with respect to any of the employees of the Company or any of its Subsidiaries are in effect or are currently being negotiated by the Company or any of its Subsidiaries, (viii) neither the Company nor any of its Subsidiaries has experienced any strike, work stoppage, picketing, walking out, lockout, slowdown or other material labor dispute during the last five (5) years, nor are any currently pending or, to the Company's knowledge, threatened.

(b) Except as set forth on Schedule 3.18(b), the Company and each of its Subsidiaries is, and within the past three (3) years has been, in compliance in all material respects with all Laws relating to labor relations or employment matters, including but not limited to Laws relating to employment practices, terms and conditions of employment, tax withholding, equal employment opportunity, discrimination, harassment, and retaliation, immigration status, employee safety and health, wages and hours, disability rights or benefits, applicant and employment background checking, the Worker Adjustment and Retraining Notification Act of 1988 and any similar state or local "mass layoff" or "plant closing" Law (collectively, "WARN"), collective bargaining, workers' compensation, equal pay, family and medical leave and other leaves of absences, and worker classification (including proper classification of employees as exempt or non-exempt under the Fair Labor Standards Act or similar state or local wage and hour laws, and proper classification of workers as employees or independent contractors). Except as set forth on Schedule 3.18(b), there are no material Claims pending or, to the Company's knowledge, threatened in writing against the Company or any of its Subsidiaries alleging a violation of any Law pertaining to labor relations or employment matters, including any charges or complaints filed with the Equal Employment Opportunity Commission or comparable Governmental Authority, nor have there been any material such Claims within the past three (3) years.

(c) To the Company's knowledge, no officer, executive or key employee of Company or any Subsidiary: (i) has any present intention to terminate his or her employment with such Company or Subsidiary within the first twelve (12) months immediately following the Closing Date; or (ii) is party to or bound by any non-competition, non-solicitation, confidentiality, non-disclosure, no-hire, or similar agreement that could materially restrict such person in the performance of his or her duties for the Company or any Subsidiary or the ability of any Company or any Subsidiary to conduct its business.

(d) Neither the Company nor any of its Subsidiaries has implemented any employee layoffs implicating WARN, in each case affecting any group of employees of the Company or any of its Subsidiaries, within the three (3) years prior to the Closing, nor has the Company or any of its Subsidiaries announced any such action or program for the future. Schedule 3.18(d) sets forth a true and complete list of employee layoffs, by date and location, implemented by the Company and its Subsidiaries in the ninety (90) day period preceding the date hereof, and the Company does not intend to implement any employee layoffs between the date hereof and the Closing Date.

3.19 Customers. Schedule 3.19 hereto sets forth a true and complete list of the ten largest customers (measured by dollar volume of sales by the Company and its Subsidiaries to such customers) of the Company and its Subsidiaries for the twelve (12)-month period ending May 31, 2016 and the expected ten largest customers (measured by dollar volume of sales by the Company or any of its Subsidiaries to such customers) of the Company and its Subsidiaries for the twelve (12)-month period ending May 31, 2017 (the "Significant Customers"). Since December 31, 2015, no Significant Customer has cancelled its relationship with the Company or any of its Subsidiaries, no Contract with a Significant Customer has been materially modified in a manner adverse to the interests of the Company relative to the terms in the previously existing Contract and no Significant Customer has provided the Company or any of its Subsidiaries written notice that it will discontinue doing business with the Company or its Subsidiaries or materially reduce the business that it currently conducts with the Company and its Subsidiaries, in each case except as set forth on Schedule 3.19.

3.20 Brokerage

. Except for the fees and expenses of Moelis & Company LLC, there are no claims for brokerage commissions, finders' fees or similar compensation due in connection with the transactions contemplated by this Agreement based on any arrangement or agreement made by or on behalf of the Company or any of its Subsidiaries.

3.21 No Other Representations and Warranties. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES REGARDING THE COMPANY CONTAINED IN THIS ARTICLE III (AS QUALIFIED BY THE DISCLOSURE SCHEDULES) OR ANY OTHER AGREEMENT OR CERTIFICATE EXECUTED IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY, THE PURCHASER ACKNOWLEDGES THAT NEITHER THE COMPANY NOR ANY OTHER PERSON ON BEHALF OF THE COMPANY MAKES ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY (INCLUDING ANY REPRESENTATION OR WARRANTY WITH RESPECT TO THE COMPANY OR ANY OF ITS SUBSIDIARIES OR WITH RESPECT TO ANY OTHER INFORMATION PROVIDED TO THE PURCHASER OR ANY OF ITS AFFILIATES OR REPRESENTATIVES), AND THE COMPANY HEREBY DISCLAIMS ANY SUCH REPRESENTATION OR WARRANTY WITH RESPECT TO THE EXECUTION AND DELIVERY OF THIS AGREEMENT AND THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. WITHOUT LIMITING THE FOREGOING, NEITHER THE COMPANY NOR ANY OTHER PERSON WILL HAVE OR BE SUBJECT TO ANY LIABILITY OR INDEMNIFICATION OBLIGATION TO THE PURCHASER, OR ANY OTHER PERSON, RESULTING FROM THE DISTRIBUTION TO THE PURCHASER OR ANY OF ITS AFFILIATES OR REPRESENTATIVES, OR THE PURCHASER'S OR ANY OF ITS AFFILIATES' OR REPRESENTATIVES' USE OF OR RELIANCE ON, ANY SUCH INFORMATION, DOCUMENTS, PROJECTIONS, FORECASTS OR OTHER MATERIAL MADE AVAILABLE TO THE PURCHASER OR ANY OF ITS AFFILIATES OR REPRESENTATIVES IN CERTAIN "DATA ROOMS" OR MANAGEMENT PRESENTATIONS OR OTHERWISE IN EXPECTATION OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY DISCUSSIONS WITH RESPECT TO ANY OF THE FOREGOING INFORMATION.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE PURCHASER AND MERGER SUB 1

Each of the Purchaser and Merger Sub 1, as applicable, represents and warrants to the Company as of the date hereof and as of the Closing that:

4.01 Organization and Corporate Power.

The Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, with full power and authority to enter into this Agreement and perform its obligations hereunder. Merger Sub 1 is a corporation duly organized, validly existing and in good standing under the laws of the State of Nevada, with full power and authority to enter into this Agreement and perform its obligations hereunder.

4.02 Authorization

. The execution, delivery and performance of this Agreement and all of the other agreements and instruments contemplated hereby to which the Purchaser or Merger Sub 1 is a party, and the consummation of the transactions contemplated hereby or thereby (including the Merger), have been duly and validly authorized by all requisite corporate action, and no other act or proceeding (corporate or otherwise) on the Purchaser's or Merger Sub 1's, as applicable, part are necessary to authorize the execution, delivery or performance of this Agreement, the other agreements contemplated hereby or the consummation of the transactions contemplated hereby or thereby (including the Merger), other than approval of this Agreement by Purchaser as the sole stockholder of Merger Sub 1 and the filing of the Articles of Merger as required by the Nevada Act. Each of the Purchaser and Merger Sub 1 has all requisite corporate power and authority and full legal capacity to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement and each of the other agreements and instruments contemplated hereby to which the Purchaser or Merger Sub 1 is a party has been duly executed and delivered by the Purchaser or Merger Sub 1, as applicable, and assuming that this Agreement and each of the other agreements and instruments contemplated hereby to which the Purchaser or Merger Sub 1 is a party has been duly executed and delivered by the Company and the other parties thereto, this Agreement and each of the other agreements and instruments contemplated hereby to which the Purchaser or Merger Sub 1 is a party constitutes a valid and binding obligation of the Purchaser or Merger Sub 1, as applicable, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy laws, other similar laws affecting creditors' rights and general principles of equity effecting the availability of specific performance and other equitable remedies.

4.03 No Violation

. Each of the Purchaser's and Merger Sub 1's execution, delivery and performance of this Agreement and each of the other agreements and instruments contemplated hereby to which the Purchaser or Merger Sub 1 is a party, and the consummation of the transactions contemplated hereby or thereby (including the Merger), will not breach or violate (a) the Purchaser's or Merger Sub 1's certificate of incorporation, articles of incorporation or its bylaws (or similar organizational documents), (b) any applicable Law, or rule or regulation, or order, writ, injunction or decree, of any Governmental Authority applicable to Purchaser or Merger

Sub 1, or (c) any Contract or Permit binding upon the Purchaser or Merger Sub 1, except in the cases of clauses (b) and (c), where such breach or violation would not materially and adversely affect the Purchaser's or Merger Sub 1's ability to execute, deliver and perform this Agreement or consummate the transactions contemplated hereby.

4.04 Governmental Authorities; Consents

. Except (a) as set forth on Schedule 4.04 and (ii) for the filing of the Articles of Merger in connection with the Merger and the filing of the Certificate of Merger and Second Articles of Merger in connection with the Second Merger, no consent, approval or authorization of any Governmental Authority or regulatory authority is required to be obtained by the Purchaser or Merger Sub 1 in connection with its execution, delivery and performance of this Agreement or the consummation of the transactions contemplated hereby.

4.05 Litigation

. There are no Claims pending or, to the Purchaser's or Merger Sub 1's knowledge, threatened against the Purchaser or Merger Sub 1 at law or in equity, or before or by any Governmental Authority, which would materially and adversely affect the Purchaser's or Merger Sub 1's ability to perform this Agreement or consummate the transactions contemplated hereby. Neither the Purchaser nor Merger Sub 1 is subject to any outstanding judgment, Order or decree of any court or Governmental Authority that would materially and adversely affect the Purchaser's or Merger Sub 1's ability to perform this Agreement or consummate the transactions contemplated hereby.

4.06 Brokerage

. Except as set forth on Schedule 4.06, there are no claims for brokerage commissions, finders' fees or similar compensation in connection with the transactions contemplated by this Agreement based on any arrangement or agreement made by or on behalf of the Purchaser or Merger Sub 1.

4.07 Investment Representation

. The Purchaser is acquiring the Shares for its own account with the present intention of holding such securities for investment purposes and not with a view to, or for sale in connection with, any distribution of such securities in violation of any federal or state securities laws. The Purchaser is an Accredited Investor. The Purchaser acknowledges that it is informed as to the risks of the transactions contemplated hereby and of ownership of the Shares. The Purchaser acknowledges that the Shares have not been registered under the Securities Act of 1933, as amended, or any state or foreign securities laws and that the Shares may not be sold, transferred, offered for sale, pledged, hypothecated or otherwise disposed of unless such transfer, sale, assignment, pledge, hypothecation or other disposition is pursuant to the terms of an effective registration statement under the Securities Act of 1933, as amended, and the Shares are registered under any applicable state or foreign securities laws or sold pursuant to an exemption from registration under the Securities Act of 1933, as amended, and any applicable state or foreign securities laws.

4.08 Financing

. The Purchaser will have on the Closing Date sufficient available funds to pay the Estimated Cash Purchase Price, and to pay all fees, costs, expenses and other amounts required to be paid by the Purchaser pursuant to this Agreement.

4.09 Solvency

. The Purchaser and Merger Sub 1 are not entering into this Agreement or the transactions contemplated hereby with the intent to hinder, delay or defraud either present or future creditors of the Purchaser, the Company or any of their respective Subsidiaries. Assuming that the Company and its Subsidiaries are solvent on the date hereof and on the Closing Date and that the representations and warranties of the Company contained in this Agreement are true and correct, and after giving effect to the transactions contemplated by this Agreement, at and immediately after the Closing Date, Purchaser and its Subsidiaries (taken as a whole) will be solvent. As used in this Section 4.09, the term "solvent" means, with respect to a Person as of a particular date, that on such date (a) the sum of the fair saleable value of assets of such Person is greater than the sum of its debts (including a reasonable estimate of the amount of all contingent liabilities), (b) such Person shall be able to pay its debts as they mature or become due; and (c) such Person and each of its Subsidiaries shall have adequate capital and liquidity to carry on their respective businesses.

4.10 Investigation

. Each of the Purchaser and Merger Sub 1 acknowledges that it is relying on its own independent investigation and analysis in entering into the transactions contemplated hereby. Each of the Purchaser and Merger Sub 1 is knowledgeable about the industries in which the Company and its Subsidiaries operate and is capable of evaluating the merits and risks of the transactions contemplated by this Agreement and is able to bear the substantial economic risk of such investment for an indefinite period of time. Each of the Purchaser and Merger Sub 1 has been afforded access to books and records, facilities and personnel of the Company and its Subsidiaries for purposes of conducting a due diligence investigation and has conducted a due diligence investigation of the Company and its Subsidiaries to its satisfaction.

4.11 Capital Stock

. The authorized shares of capital stock of the Purchaser consist of (i) 500,000,000 shares of Purchaser Common Stock and (ii) 10,000,000 shares of Purchaser Preferred Stock. As of June 30, 2016, 64,007,899 shares of Purchaser Common Stock were issued and outstanding and no shares of Purchaser Preferred Stock were issued and outstanding. As of the date hereof, all of the issued and outstanding shares of Purchaser Common Stock are duly authorized, validly issued, fully paid and non-assessable. At the Closing, Purchaser will have sufficient authorized but unissued shares or treasury shares of Purchaser Common Stock for Purchaser to meet its obligation to deliver the Purchaser Shares under this Agreement.

4.12 Purchaser Shares. Upon issuance, the Purchaser Shares will be duly authorized, validly issued, fully paid and non-assessable and will not be subject to any option, call, preemptive, subscription or similar rights or Liens, other than Permitted Liens and restrictions on transfer imposed by state and federal securities laws.

4.13 No Purchaser Material Adverse Effect. Since December 31, 2015, there has occurred no event, change, circumstance, occurrence, fact, condition, effect or development that has had, or would reasonably be expected to have, a Purchaser Material Adverse Effect.

4.14 No Shareholder Approval. The issuance and delivery by Purchaser of the Purchaser Shares to the Sellers does not require any vote or other approval or authorization of any holder of any capital stock of Purchaser.

4.15 Purchaser SEC Reports. Purchaser has filed all required registration statements, prospectuses, reports, schedules, forms, statements, and other documents (including exhibits and all other information incorporated by reference) required to be filed by it with the SEC since January 1, 2015. All such required registration statements, prospectuses, reports, schedules, forms, statements, and other documents (including those that Purchaser may file subsequent to the date of this Agreement until the Closing) are referred to herein as the "Purchaser SEC Reports". As of their respective dates, the Purchaser SEC Reports (a) were prepared in accordance and complied in all material respects with the requirements of Laws applicable to such Purchaser SEC Reports; and (b) did not at the time they were filed (or if amended or superseded by a filing prior to the date of this Agreement, then on the date of such filing) contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. None of Purchaser's Subsidiaries is required to file any forms or reports with the SEC.

4.16 No Reliance. Each of the Purchaser and Merger Sub 1 represents, warrants and agrees that the Purchaser has not relied upon any information, or the omission of any information, provided or made available by the Sellers, the Company, any Subsidiary of the Company, or any of their respective Representatives, other than the representations and warranties set forth in Article III (including without limitation, any estimates, projections, forecasts or other materials made available to the Purchaser, Merger Sub 1 or their Affiliates in certain "data rooms," management presentations or the like). Each of the Purchaser and Merger Sub 1 acknowledges that it is taking full responsibility for making its own evaluation of the adequacy and accuracy of all estimates, projections and other forecasts, including, without limitation, the reasonableness of the assumptions underlying such estimates, projections and forecasts.

4.17 Tax Matters.

(a) None of the Purchaser or its Subsidiaries has knowingly taken or agreed to take any action, has knowingly failed to take any action, or has knowledge of any fact, agreement, plan or other circumstance that could reasonably be expected to prevent or impede the Transactions from qualifying as a reorganization under Code Section 368(a)(1)(A) by reason of Code Section 368(a)(2)(D).

(b) Neither Purchaser, nor any of its Affiliates, nor a "related person" (as defined for purposes of Treasury Regulations Section 1.368-1(e)(4)) with respect to Purchaser (a "Related Tax Person"), nor any entity or arrangement that is treated as a partnership for federal income tax purposes and in which Purchaser or a Related Tax Person is treated for federal income tax purposes as owning a direct or indirect interest, has any intention, in connection with the Transactions provided for herein (as determined for purposes of Treasury Regulations Section 1.368-1(e)), to redeem or otherwise acquire any of the shares of Parent Common Stock transferred in connection with the Transactions if such action would cause the Transactions to fail to qualify as a reorganization under Code Section 368(a)(1)(A) by reason of Code Section 368(a)(2)(D).

4.18 No Other Representations and Warranties.

EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF THE PURCHASER AND MERGER SUB 1 CONTAINED IN THIS ARTICLE IV (INCLUDING ANY DOCUMENTS REFERENCED THEREIN) OR ANY OTHER AGREEMENT OR CERTIFICATE EXECUTED IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY, THE PURCHASER AND MERGER SUB 1 DO NOT MAKE ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY, AND THE PURCHASER AND MERGER SUB 1 HEREBY DISCLAIM ANY SUCH REPRESENTATION OR WARRANTY WITH RESPECT TO THE EXECUTION AND DELIVERY OF THIS AGREEMENT AND THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

ARTICLE V

COVENANTS OF THE COMPANY

5.01 Conduct of the Business.

From the date hereof until the earlier of the Closing and the termination of this Agreement in accordance with Section 7.01, except (i) as expressly contemplated hereunder, (ii) as required by Law, (iii) if the Purchaser shall have consented in advance in writing or (iv) as set forth on Schedule 5.01, the Company shall (and shall cause each of its Subsidiaries to) conduct the Business in the ordinary course of business consistent with past practice and use commercially reasonable efforts to preserve the goodwill and organization of its business and the relationships with customers, suppliers, vendors, officers, employees, consultants and other Persons having business relations with the Company and its Subsidiaries, and the Company shall not, and shall cause each of its Subsidiaries not to:

(a) issue, sell or deliver any shares of capital stock or issue or sell any securities convertible, exercisable or exchangeable into, or options with respect to, or warrants to purchase or rights to subscribe for, any shares of capital stock, or stock appreciation, phantom stock, profit participation or similar rights, or any notes, bond or debt securities;

(b) effect any recapitalization, reclassification, stock dividend, stock split or similar change in capitalization;

(c) amend its certificate or articles of incorporation or bylaws (or equivalent organizational documents);

(d) make any redemption or purchase of any shares of capital stock, including the Shares;

(e) sell, assign, transfer, mortgage, pledge, lease, license, sublicense or subject to any Lien, charge or otherwise encumber all or any portion of its assets, except Permitted Liens;

(f) make any capital investment in, or any capital contribution or loan or advance to, or guaranty for the benefit of, any other Person;

(g) make any capital expenditures or commitments therefor in excess of $250,000, except for such capital expenditures or commitments therefor that are reflected in the Company's capital expenditure budget for the fiscal year ending December 31, 2016 previously provided to the Purchaser, or delay any capital expenditures contemplated by such budget;

(h) make any loan to, or enter into any other transaction with, any directors, officers or employees, other than immaterial loans or transactions made or entered into in the outside the ordinary course of business consistent with past practice;

(i) incur any Indebtedness (other than to the extent the amount incurred is set forth on the Indebtedness Payoff Schedule);

(j) make or grant any bonus or any wage or salary increase to any director, officer, employee or group of employees, or make or grant any increase in any employee benefit plan or arrangement, or amend or terminate any existing employee benefit plan or arrangement or adopt any new employee benefit plan or arrangement or enter into, amend or terminate any collective bargaining agreement or other employment agreement;

(k) implement any employee layoffs implicating WARN;

(l) compromise or settle any material Claim;

(m) terminate or materially modify or amend any Contract, or enter into any agreement that, if existing prior to the date of this Agreement, would be a Contract, other than in the ordinary course of business consistent with past practice;

(n) hire any officers or key employees or terminate the services of any existing officers or existing key employees, other than for cause;

(o) knowingly take or agree to take any action, or fail to take any action that could reasonably be expected to prevent or impede the Transactions from qualifying as a reorganization under Code Section 368(a)(1)(A) by reason of Code Section 368(a)(2)(D); or

(p) take or omit to take any action that would have required to be disclosed under Sections 3.06(d), 3.06(g), 3.06(j), 3.06(k), 3.06(l), 3.06(o), 3.06(p) or 3.06(q) if such action had been taken between December 31, 2015 and the date of this Agreement.

Without limiting the scope of covenants of the Company set forth in this Section 5.01, the parties acknowledge and agree that (y) nothing contained in this Section 5.01 is intended to give the Purchaser or Merger Sub 1, directly or indirectly, the

right to direct the control or operations of the Company or any of its Subsidiaries prior to the Closing and (z) prior to the Closing, subject to this Section 5.01, the Company shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over the operations of it and its Subsidiaries.

5.02 Access to Books and Records

.

(a) From the date hereof until the earlier of the Closing and the termination of this Agreement in accordance with Section 7.01, the Company shall (and shall cause each of its Subsidiaries to) provide the Purchaser and its Representatives with full access during normal business hours and upon reasonable notice to the offices, properties, books and records of the Company and its Subsidiaries; provided that (a) such access shall not materially and unreasonably interfere with the conduct of the business of the Company and its Subsidiaries, taken as a whole, (b) nothing herein shall require the Company and its Subsidiaries to provide access to, or to disclose any information to, the Purchaser if such access or disclosure would be reasonably likely to (i) waive any legal privilege or (ii) be in violation of applicable Law (including the HSR Act or any other applicable antitrust Law) or the provisions of any Contract entered into prior to the date of this Agreement and to which the Company or any Subsidiary is a party, and (c) nothing herein shall require the Company or its Subsidiaries to allow the Purchaser to conduct invasive environmental sampling or testing of the Real Property or relating to the Business without the written consent of the Company; provided, however, that the Company has provided consent to the environmental sampling activities described on Schedule 5.02. In the event that the Company or its Subsidiaries does not provide access to or disclose information in reliance on clause (i) or (ii) of the preceding sentence, the Company shall provide written notice to the Purchaser that it is denying such access or withholding such information and shall use its commercially reasonable efforts to communicate, to the extent feasible, the applicable information in a way that would not waive such privilege or contravene such Law or Contract. The Purchaser acknowledges that it remains bound by the Confidentiality Agreement, dated April 15, 2016 (the "Confidentiality Agreement") and that all information it obtains as a result of access under this Section 5.02 shall be subject to the Confidentiality Agreement.

(b) The Company shall deliver to the Purchaser copies of the Company's unaudited interim monthly consolidated financial statements as soon as reasonably practicable (and in any event within thirty (30) days) following the end of each full monthly accounting period following the date hereof during the period between the date of this Agreement and the Closing as prepared by the Company in the ordinary course of business.

5.03 Conditions

. Subject to the terms of the covenants in Section 8.05, the Company shall use commercially reasonable efforts to cause the conditions set forth in Section 2.01 (to the extent applicable to the Company and/or any such Seller) to be satisfied and to consummate the transactions contemplated herein as soon as reasonably possible after the satisfaction of the conditions set forth in Article II (other than those to be satisfied at the Closing). For purposes of this Agreement, the "commercially reasonable efforts" of the Company shall not require the Company or any of its Subsidiaries, Affiliates or Representatives to waive or surrender any right, to modify any agreement (including any agreement set forth on Schedule 3.09), to offer or grant any accommodation or concession (financial or otherwise) to any third party in order to obtain any consent required for the consummation of the transactions contemplated by this Agreement (unless required by the terms of the applicable Contract with such third party), to waive or forego any right, remedy or condition hereunder or to provide financing to the Purchaser or any other Person for the consummation of the transactions contemplated hereby.

5.04 Exclusive Dealing

. During the period from the date of this Agreement through the Closing or the earlier termination of this Agreement pursuant to Section 7.01, the Company shall not (and the Company shall cause its Affiliates, Subsidiaries and Representatives and the Sellers not to), directly or indirectly, take any action to encourage, initiate or engage in discussions or negotiations with, provide any information to, or enter into any letter of intent, Contract or understanding with, any Person (other than the Purchaser and its Affiliates and Representatives) concerning the purchase of any Shares or any merger, sale of all, substantially all or any material portion of the assets of the Company and its Subsidiaries or similar transactions involving the Company and its Subsidiaries. The Sellers Representatives and the Company shall notify the Purchaser in writing immediately if any Person makes any proposal, offer, inquiry or contact with respect to any of the foregoing, such notice to include the material terms of any such proposal or other inquiry and the name of the Person making such proposal. Each Seller agrees that, during the period from the date hereof to the earlier of the Closing and the date that this Agreement is terminated in accordance with Section 7.01, such Seller will not, directly or indirectly, sell, transfer, dispose or otherwise convey ownership of, or legal right or entitlement to, any of such Seller's Shares other than to the Company or to any other Seller. Any sale, transfer, disposition or other conveyance in violation of this Section 5.04 shall be null and void. The Company agrees that it will not record in the stock register or other books and records of the Company any transfer in violation of this Section 5.04.

5.05 Notification

. The Company shall promptly notify the Purchaser if the Sellers Representatives, any Seller or the Company obtains knowledge of (a) the occurrence or non-occurrence of any event the occurrence or non-occurrence of which (i) results in any of the representations or warranties contained in Article III being untrue or inaccurate in any material respect (or, in the case of any representation or warranty qualified by its terms by materiality, including the words "material" or "Company Material Adverse Effect", then untrue or inaccurate in any respect) or (ii) would be reasonably likely to cause any of the conditions set forth in Section 2.01 to be incapable of satisfaction, and (b) any material breach of, or failure to comply in any material respect with, any covenant of the Company hereunder.

5.06 280G Approval

. The Company shall promptly obtain approval, to the extent required by and in a manner that complies with Section 280G(b)(5)(B) of the Code and the Treasury Regulations promulgated thereunder, of the right of any "disqualified individual" (as defined in Section 280G(c) of the Code) to receive or retain any payments that could, in the absence of such approval, constitute "excess parachute payments" (as defined in Section 280G(b)(1) of the Code); provided that, at least five (5) Business Days prior to the Closing, Purchaser shall provide a list and a summary of any agreement, contract, arrangement or Benefit Plan that Purchaser or its Affiliates are providing or entering into prior to the Closing with any disqualified individual in connection with the transactions contemplated hereby that could be treated as a "parachute payment" (either alone or together with any other payments to a disqualified individual). Prior to seeking such approval, the Company shall obtain waivers from the intended recipients of such payments in which case, unless approved to the extent required by and in the manner that complies with Section 280G(b)(5)(B) of the Code and the Treasury Regulations promulgated thereunder, neither the Company nor any of its Affiliates shall make such waived payments. At least five (5) days prior to seeking any waiver or approval, the Company shall deliver to Purchaser drafts of all waivers, consents, disclosures, and other documents prepared in connection with the actions described in this Section 5.06, and the Company shall accept any reasonable comments from Purchaser to such documents.

5.07 Pre-Closing Distribution. Prior to consummating the Pre-Closing Distributions, the Company shall provide to the Purchaser drafts of all proposed documentation associated therewith for Purchaser's review, and shall consider in good faith any reasonable comments proposed by the Purchaser. Prior to the Closing, the Company shall, and shall cause its Subsidiaries to, take all actions and to do all things necessary, proper or advisable to effect the Pre-Closing Distributions. The Company shall not make any modifications to the Pre-Closing Distributions without the prior written consent of the Purchaser (which consent shall not be unreasonably withheld, conditioned or delayed).

ARTICLE VI

COVENANTS OF THE PURCHASER

6.01 Books and Records.

(a) From and after the Closing, for a period of three (3) years, the Purchaser shall, and shall cause the Surviving Corporation to, provide the Sellers Representatives and their authorized representatives, subject to reasonable restrictions imposed by the Surviving Corporation or the Purchaser from time to time, with reasonable access, during normal business hours and upon reasonable notice, to the books and records (for the purpose of examining and copying at the sole expense of the Sellers Representatives) of the Surviving Corporation and its Subsidiaries with respect to periods or occurrences prior to or on the Closing Date, in each case, as may be reasonably required by any Seller in connection with any legal proceedings by or against, or Tax audits against, governmental investigations of, or compliance with Law by any Seller or its, his or her Affiliates; provided, however, that (x) such access shall be subject to the Purchaser's and the Surviving Corporation's reasonable security measures and shall not unreasonably interfere with the operations of the Purchaser, the Surviving Corporation and its Subsidiaries, (y) nothing herein shall require the Purchaser, the Surviving Corporation or any of its Subsidiaries to provide access to, or to disclose any information to, the Sellers Representatives or a Seller if such access or disclosure in the reasonable judgment of legal counsel to the Purchaser, the Surviving Corporation or any of its Subsidiaries would be reasonably likely to (i) waive any legal privilege or (ii) be in violation of applicable Law or the provisions of any agreement to which the Purchaser, the Surviving Corporation or any of its Subsidiaries is a party and (z) the Sellers Representatives or any such Seller shall treat as confidential any Confidential Information of the Surviving Corporation that it receives following the Closing whether pursuant to this Section 6.01(a) or otherwise and shall not disclose such information other than (1) as required by Law or legal process, (2) in connection with claims arising from this Agreement, or (3) on a need to know basis to any Seller or its representatives who agree in advance to maintain the confidentiality of such information in accordance with this clause (z).

(b) The Purchaser shall not, and shall not permit any of its Subsidiaries to, for a period of five (5) years following the Closing Date, destroy or otherwise dispose of any of the books and records of any of the Surviving Corporation or its Subsidiaries for any period prior to the Closing Date that are required to be retained for such period of time under the current retention policies of the Surviving Corporation and its Subsidiaries without first giving reasonable prior notice to the Sellers Representatives and offering to surrender to the Sellers Representatives such books and records or any portion thereof which the Purchaser or any of its Subsidiaries may intend to destroy or dispose of.

6.02 Notification. From the date hereof until the Closing Date, the Purchaser shall promptly notify the Company if the Purchaser or Merger Sub 1 obtains knowledge (a) of the occurrence or non-occurrence of any event the occurrence or non-

occurrence of which (i) results in any of its representations or warranties contained in Article IV being untrue or inaccurate in any material respect (or, in the case of any representation or warranty qualified by its terms by materiality, including the words "material" or "Purchaser Material Adverse Effect", then untrue or inaccurate in any respect) or (ii) would be reasonably likely to cause any of the conditions set forth in Section 2.02 to be incapable of satisfaction, and (b) any material breach of, or failure to comply in any material respect with, any covenant of the Purchaser or Merger Sub 1 hereunder. Purchaser and Merger Sub 1 acknowledge that no such notification or update by Purchaser, however, shall be deemed to affect (i) any right of the Sellers Representatives to terminate this Agreement pursuant to Section 7.01 or (ii) the indemnification obligations of the Purchaser under Section 8.01.

6.03 Director and Officer Liability and Indemnification.

(a) For a period of six (6) years after the Closing Date, the Purchaser shall not, and shall not permit the Surviving Corporation or any of its Subsidiaries to amend, repeal or modify any provision in the Company's or any of its Subsidiaries articles of incorporation, bylaws or any agreement set forth on Schedule 6.03, relating to the exculpation or indemnification rights of, or advancement of expenses to, any employee, manager, managing member, member, fiduciary or agent who is a current or former officer or director (the "D&O Indemnified Persons") in a manner that would adversely affect such exculpation or indemnification rights of any such current or former officer or director (unless required by law), it being the intent of the parties that the D&O Indemnified Persons shall continue to be entitled to such exculpation and indemnification rights to the fullest extent of the Law to the extent provided in the Company's or any of its Subsidiaries' articles of incorporation or bylaws as of the date hereof relating to exculpation or indemnification. If the Purchaser, the Surviving Corporation or any of its Subsidiaries or any of their respective successors or assigns (i) shall consolidate with or merge into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) shall transfer all or substantially all of its properties and assets to any Person, then, and in each such case, proper provisions shall be made so that the successors and assigns of the Purchaser and the Surviving Corporation and its Subsidiaries shall assume all of the obligations set forth in this Section 6.03. The provisions of this Section 6.03 are intended for the benefit of, and will be enforceable by, each D&O Indemnified Person and his or her heirs and representatives, and are in addition to, and not in substitution for, any other rights to indemnification or contribution that any such person may have had by contract or otherwise.

(b) This Section 6.03 is intended to be for the benefit of each of the D&O Indemnified Persons and may be enforced by any such D&O Indemnified Person as if such D&O Indemnified Person were a party to this Agreement. The obligations of the Purchaser under this Section 6.03 shall not be terminated or modified in such a manner as to materially and adversely affect any Person to whom this Section 6.03 applies without the consent of such affected Person.

(c) For the avoidance of doubt, (i) the provisions of this Section 6.03 and the indemnification contemplated by this Section 6.03 shall not be subject to any of the survival or other limitation or exclusive remedy provisions of Article VIII and (ii) the expense of any "tail" insurance policy obtained by the Company or its directors with respect to directors liability insurance shall be the responsibility of the Sellers, either directly or indirectly through the use of the Company's Cash on hand prior to the Closing.

6.04 Conditions

. Subject to the terms of the covenants in Section 8.05, Purchaser shall use its commercially reasonable efforts to cause the conditions set forth in Section 2.02 to be satisfied and to consummate the transactions contemplated herein as soon as reasonably possible after the satisfaction of the conditions set forth in Article II (other than those to be satisfied at the Closing).

6.05 Employment and Benefit Arrangements

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(a) The Purchaser shall take all actions required so that eligible employees of the Company and its Subsidiaries shall receive service credit with respect to service with the Company and its Subsidiaries (or their predecessors) prior to the Closing Date for purposes of eligibility and vesting under any employee benefit plans and arrangements (excluding any defined benefit pension plans and equity or equity-related plans and arrangements) in which each such employee is eligible to participate following the Closing Date; provided that no retroactive contributions will be required and provided, further, except to the extent such credit would result in the duplication of benefits. To the extent that the Purchaser modifies any group health coverage or benefit plans under which the employees of the Company and its Subsidiaries participate, the Purchaser shall use commercially reasonable efforts to waive any applicable waiting periods, pre-existing conditions or actively-at-work requirements and shall use commercially reasonably efforts to give such employees credit under the new coverages or benefit plans for deductibles, co-insurance and out-of-pocket payments that have been paid during the year in which such coverage or plan modification occurs. This Section 6.05 shall survive the Closing, and shall be binding on all successors and assigns of the Purchaser, the Company and its Subsidiaries. Through December 31, 2016, Purchaser shall take all actions required so that each employee of the Company and its Subsidiaries (determined as of the Closing Date) who continues in employment with the Company and its Subsidiaries during such period (i) receives base compensation and bonus opportunities (excluding any equity or equity-related opportunities) that are no less favorable than that provided by the Company or its Subsidiaries to such employee immediately prior to the Closing Date, (ii) receives benefits that, in the aggregate, are substantially comparable in the

aggregate to those benefits provided by the Company or its Subsidiaries under the Benefit Plans (other than equity or equity-related arrangements) to such employee immediately prior to the Closing Date or are substantially comparable in the aggregate to those benefits provided by Purchaser or its Affiliates to their similarly situated employees and (iii) to the extent that any such employee is terminated for other than "cause" following the Closing and prior to December 31, 2016, receives severance pay that is no less than the severance pay that would have been payable to such employee under the severance policy in effect immediately prior to the Closing Date.

(b) Nothing contained in this Section 6.05 shall obligate Purchaser, the Surviving Corporation, or any of the Surviving Corporation's Subsidiaries to continue the employment of any employee of, or the service relationship of any other service provider to, the Company or any of its Subsidiaries for any period of time after the Closing, and this Section 6.05 shall not be construed to limit the ability of Purchaser, the Surviving Corporation, or any of the Surviving Corporation's Subsidiaries to terminate the employment of any employee of, or the service relationship of any other service provider to, the Surviving Corporation or any of its Subsidiaries following the Closing in accordance with applicable Law and any pre-existing contractual relationship. Further, this Section 6.05 shall be binding upon and inure solely to the benefit of the parties to this Agreement, and nothing in this Section 6.05, express or implied, shall confer upon any other Person any rights or remedies of any nature whatsoever under or by reason of this Section 6.05 or be construed as an amendment, waiver, termination, or creation of any benefit or compensation plan, program, agreement, Contract, policy, or arrangement of Purchaser, the Surviving Corporation, or any of the Surviving Corporation's Subsidiaries.

6.06 Registration of Purchaser Shares. Prior to Closing, Purchaser shall register the issuance of the Purchaser Common Stock pursuant to this Agreement under the Securities Act of 1933, as amended, pursuant to the terms of an effective registration statement filed with the SEC thereunder and any other filings required under any applicable state or foreign securities laws, such that each of the Sellers may (subject to Section 8.07, as applicable) resell any such shares of Purchaser Common Stock immediately following Closing without reliance on any exemption from registration under the Securities Act of 1933, as amended, or any other such securities laws.

6.07 Certain Tax Matters.

(a) Purchaser shall not, and shall cause Merger Sub 1, Merger Sub 2 and the Surviving Corporation not to, knowingly take or agree to take any action, or knowingly fail to take any action that could reasonably be expected to prevent or impede the Transactions from qualifying as a reorganization under Code Section 368(a)(1)(A) by reason of Code Section 368(a)(2)(D).

(b) Purchaser shall use commercially reasonable efforts, and shall cause Merger Sub 1, Merger Sub 2 and the Surviving Corporation to use commercially reasonable efforts, to ensure that the continuity of business enterprise requirement of Treasury Regulations Section 1.368-1(d) is satisfied in connection with the transactions provided for herein.

ARTICLE I

TERMINATION

1.01 Termination

. This Agreement may be terminated at any time prior to the Closing only as follows:

(a) by the mutual written consent of the Sellers Representatives (on behalf of the Sellers and the Company) and the Purchaser;

(b) by the Purchaser, if there has been a material violation or breach by the Company of any covenant, representation or warranty contained in this Agreement that (i) has prevented the satisfaction of any condition to the obligations of the Purchaser at the Closing and such violation or breach has not been waived by the Purchaser and (ii) is not capable of being cured or, if capable of being cured, has not been cured by the Company prior to the earlier of (A) ten (10) Business Days after receipt by the Sellers Representatives of written notice thereof from the Purchaser and (B) the Termination Date; provided that Purchaser may not terminate this Agreement pursuant to this Section 7.01(b) if Purchaser is then in breach of this Agreement so as to cause any of the conditions set forth in Section 2.01 not to be satisfied;

(c) by the Sellers Representatives (on behalf of the Sellers and the Company), if there has been a material violation or breach by the Purchaser of any covenant, representation or warranty contained in this Agreement that (i) has prevented the satisfaction of any condition to the obligations of the Company at the Closing and such violation or breach has not been waived by the Company and the Sellers Representatives and (ii) is not capable of being cured or, if capable of being cured, and has not been cured by the Purchaser prior to the earlier of (A) ten (10) Business Days after receipt by the Purchaser of written notice thereof from the Company and the Sellers Representatives and (B) the Termination Date; provided that the Sellers Representatives may not terminate this Agreement pursuant to this Section 7.01(c) if the Company is then in breach of this Agreement so as to cause any of the conditions set forth in Section 2.02 not to be satisfied;

(d) by the Purchaser, if the transactions contemplated hereby have not been consummated on or before (i) the date that is ninety (90) days following the date hereof or, (ii) one hundred and twenty (120) days following the date hereof if the approvals required to be obtained under the HSR Act with respect to the transactions contemplated hereby have not been obtained within ninety (90) days following the date hereof (the "Termination Date"); provided that the Purchaser shall not be entitled to terminate this Agreement pursuant to this Section 7.01(d) if the Purchaser's breach of this Agreement has been the cause of, or resulted in, the failure of the Closing to occur prior to such Termination Date;

(e) by the Sellers Representatives (on behalf of the Sellers and the Company), if the transactions contemplated hereby have not been consummated on or before the Termination Date; provided that the Sellers Representatives shall not be entitled to terminate this Agreement pursuant to this Section 7.01(e) if the Company's breach of this Agreement has been the cause of, or resulted in, the failure of the Closing to occur prior to such Termination Date; or

(f) by the Purchaser or the Sellers Representatives (on behalf of the Sellers and the Company) if there is in effect a final nonappealable Order, which prohibits the consummation of the transactions contemplated by this Agreement; provided that neither Sellers Representatives nor Purchaser may terminate this Agreement pursuant to this Section 7.01(f) if the issuance of such Order was caused by or resulting from the material breach of such Person's (or, in the case of the Sellers Representatives, the Company's) obligations under this Agreement.

The party desiring to terminate this Agreement pursuant to clauses (b), (c), (d), (e) or (f) of this Section 7.01 shall give written notice of such termination to the other parties hereto.

1.02 Effect of Termination

. In the event this Agreement is terminated by either the Purchaser or the Sellers Representatives as provided above, (a) the provisions of this Agreement shall immediately become void and of no further force and effect (other than this Section 7.02 and Article X hereof which shall survive the termination of this Agreement), provided, however, that the Confidentiality Agreement will survive the termination of this Agreement in accordance with its terms, and (b) there shall be no liability on the part of any of the Purchaser, Merger Sub 1, the Company, any of their respective Subsidiaries or Affiliates or the Sellers to one another, except for any Willful Breach of this Agreement prior to the time of such termination. Nothing in this Article VII shall be deemed to impair the right of any party to compel specific performance by another party of its obligations under this Agreement in accordance with the terms of this Agreement.

ARTICLE II

ADDITIONAL COVENANTS

2.01 Survival of Representations, Warranties, Covenants, Agreements and Other Provisions; Indemnification

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(a) Survival. Each representation and warranty contained in Article III, and Article IV (as qualified by the Disclosure Schedules) or in the Letters of Transmittal or any certificate delivered in connection with this Agreement shall survive the Closing and shall terminate on the twelve (12) month anniversary of the Closing Date (the "Initial Release Date"), except that (i) the representations and warranties in (A) Section 3.01 (Organization and Corporate Power), Section 3.02 (Subsidiaries), Section 3.03 (Authorization; No Breach; Valid and Binding Agreement), Section 3.04 (Capital Stock), Section 3.08 (Tax Matters), Section 3.17 (Affiliated Transactions) and Section 3.20 (Brokerage) (collectively, the "Company Fundamental Representations"), (B) Section 3(a), Section 3(b), Section 3(c) and Section 3(f) of the Letters of Transmittal (collectively, the "Seller Fundamental Representations") and (C) Section 4.01 (Organization and Corporate Power), Section 4.02 (Authorization) and Section 4.06 (Brokerage) (collectively, the "Purchaser Fundamental Representations") shall terminate on the forty-eight (48) month anniversary of the Closing Date and (ii) the representations and warranties in Section 3.16 (Environmental Compliance and Conditions) shall survive the Closing and shall terminate on the twenty-four (24) month anniversary of the Closing Date. The covenants and agreements contained in this Agreement (i) that are required to be performed in whole prior to the Closing shall survive the Closing and shall terminate at, and shall not survive, the Closing and (ii) that require performance after the Closing Date shall survive until the date or dates expressly specified therein or, if not so specified, until performed in accordance with their terms. Notwithstanding the foregoing or anything else to the contrary in this Agreement, (x) in no case shall the expiration of the representations, warranties, covenants and agreements affect any claim for indemnification thereunder if written notice of such breach is given to the party or parties providing such indemnification pursuant to the terms of this Agreement prior to such expiration, and (y) in no event shall any representations, warranties, covenants and agreements set forth in this Agreement, or any document or agreement pertaining to the transactions contemplated by this Agreement, survive with respect to Proterra following December 31, 2022.

(b) Indemnification With Respect to Company Matters. Subject to the limitations in Section 8.01(e), as applicable, from and after the Closing Date, the Purchaser and its Affiliates (including the Surviving Corporation (and the Second Surviving Corporation) and its Subsidiaries after the Closing) and their respective former, current and future stockholders, officers, directors, employees, agents, partners and representatives, and each of their successors and assigns

(collectively, the "Purchaser Indemnified Parties") shall be indemnified and held harmless by the Sellers (severally and not jointly, in accordance with their respective Allocation Percentages) against and reimbursed for any and all loss, liability, demand, judgment, Claim, cost, damage, deficiency, Tax, penalty, fine or expense, whether or not arising out of third-party claims (including reasonable legal fees and expenses) (collectively, "Losses"), which any such Purchaser Indemnified Party may suffer, sustain or become subject to, as a result of or in connection with:

(i) any breach by the Company of any representation or warranty made by the Company in Article III of this Agreement (as qualified by the Disclosure Schedules), or in any of the certificates executed and furnished by the Company pursuant to this Agreement;

(ii) any nonfulfillment or breach of any covenant or agreement by the Company under this Agreement;

(iii) any unpaid Indebtedness and unpaid Seller Transaction Expenses, in each case as of the Closing in each case to the extent such are not included in the calculation of the Estimated Cash Purchase Price or the Final Cash Purchase Price;

(iv) (A) all Taxes (or the non-payment thereof) of the Company and its Subsidiaries for all Pre-Closing Tax Periods (including, for the avoidance of doubt, any Taxes resulting from or attributable to the Pre-Closing Distributions), (B) any and all Taxes of any member of an affiliated, consolidated, combined, or unitary group of which the Company or its Subsidiaries (or any predecessor) is or was a member on or prior to the Closing Date, including pursuant to Treasury Regulation Section 1.1502-6 (or any analogous or similar state, local, or foreign Law), and (C) any and all Taxes of any Person (other than the Company and its Subsidiaries) imposed on the Company or its Subsidiaries as a transferee or successor, by contract or pursuant to any Law, rule or regulation, which Taxes relate to an event or transaction occurring before the Closing; and/or

(v) the matter identified on Schedule 3.16, Item 1, including any fines or penalties and all costs related to undertaking the actions described in the referenced restoration plan.

(c) Indemnification With Respect to Seller Matters. Subject to the limitations in Section 8.01(e), as applicable, from and after the Closing Date, the Purchaser Indemnified Parties shall be indemnified and held harmless by each Seller against and reimbursed for any and all Losses which any such Purchaser Indemnified Party may suffer, sustain or become subject to, as a result of or in connection with:

(i) any breach by such Seller of any representation or warranty made by such Seller in his, her or its Letter of Transmittal, or in any of the certificates executed and furnished by such Seller pursuant to this Agreement; or

(ii) any nonfulfillment or breach of any covenant or agreement by such Seller under this Agreement or such Seller's Letter of Transmittal.

(d) Indemnification With Respect to Purchaser Matters. Subject to the limitations set forth in Section 8.01(e), from and after the Closing Date, the Sellers and each of its respective former, current and future stockholders, officers, directors, employees, agents, partners and representatives, and each of their successors and assigns (collectively, the "Seller Indemnified Parties") shall be indemnified and held harmless by the Purchaser against and reimbursed for any and all Losses which any such Seller Indemnified Party may suffer, sustain or become subject to, as a result of or in connection with:

(i) any breach by the Purchaser or Merger Sub 1 of any representation or warranty made by the Purchaser or Merger Sub 1 in Article IV of this Agreement or any of the Disclosure Schedules attached hereto, or in any of the certificates furnished by the Purchaser or Merger Sub 1 pursuant to this Agreement;

(ii) any nonfulfillment or breach of any covenant, agreement or other provision by the Purchaser or Merger Sub 1 under this Agreement; or

(iii) any nonfulfillment or breach of any covenant, agreement or other provision of this Agreement required by its terms to be performed by the Surviving Corporation.

(e) Limits on Indemnification. Notwithstanding anything contained in this Section 8.01 to the contrary:

(i) Purchaser Indemnified Parties shall not be entitled to any indemnification pursuant to Section 8.01(b), (x) with respect to any individual occurrence, event or circumstance, unless and until the aggregate of all Losses subject to indemnification resulting from such individual occurrence, event or circumstance exceeds $25,000 (the "Mini-Basket") (it being agreed, however, that the dollar value of Losses resulting from "individual" occurrences, events or circumstances that relate to or result from the same cause or circumstance will be aggregated for purposes of this clause (x)), and (y) unless and until the aggregate dollar amount of all Losses that would otherwise be indemnifiable pursuant to Section 8.01(b) exceeds $1,515,000 (the "Deductible"), and then only to the extent such Losses exceed the Deductible; provided, however, that the foregoing limitations shall not apply in the case of (A) a claim for any breach of any Company Fundamental Representation (provided that the foregoing limitations described in clause (x) shall apply to any such claim), (B) a claim pursuant to

Section 8.01(b)(ii) (other than a claim brought based on the failure to provide notice of a breach of a representation and warranty (other than any Company Fundamental Representation) pursuant to Section 5.05), Section 8.01(b)(iii), Section 8.01(b)(iv) or Section 8.01(b)(v) (and any Losses with respect to such claims shall not count toward the Deductible) or (C) in the case of Fraud.

(ii) Seller Indemnified Parties shall not be entitled to any indemnification pursuant to Section 8.01(d), (x) with respect to any individual occurrence, event or circumstance, unless and until the aggregate of all Losses subject to indemnification resulting from such individual occurrence, event or circumstance exceeds the Mini-Basket (it being agreed, however, that the dollar value of Losses resulting from "individual" occurrences, events or circumstances that relate to or result from the same cause or circumstance will be aggregated for purposes of this clause (x)), and (y) unless and until the aggregate dollar amount of all Losses that would otherwise be indemnifiable pursuant to Section 8.01(d) exceeds the Deductible, and then only to the extent such Losses exceed the Deductible; provided, however, that the foregoing limitations shall not apply in the case of (A) a claim for any breach of any Purchaser Fundamental Representation, (B) a claim pursuant to Section 8.01(d)(ii) (and any Losses with respect to such claims shall not count toward the Deductible) or (C) in the case of Fraud.

(iii) Purchaser Indemnified Parties shall not be entitled to indemnification pursuant to Section 8.01(b) in excess of the amount then remaining in the Indemnity Escrow Account (the "Indemnity Escrow Cap"). The Indemnity Escrow Amount shall be the sole and exclusive remedy of the Purchaser Indemnified Parties to recover for any indemnifiable Losses pursuant to Section 8.01(b), and once the Indemnity Escrow Amount is depleted, the Purchaser Indemnified Parties shall have no further rights to indemnification pursuant to Section 8.01(b); provided, however, that the foregoing limitation shall not apply in the case of (A) a claim for any breach of any Company Fundamental Representation, (B) a claim pursuant to Section 8.01(b)(ii) (other than a claim brought based on the failure to provide notice of a breach of a representation and warranty (other than any Company Fundamental Representation) pursuant to Section 5.05), Section 8.01(b)(iii), Section 8.01(b)(iv) or Section 8.01(b)(v) or (C) in the case of Fraud.

(iv) Seller Indemnified Parties shall not be entitled to indemnification pursuant to Section 8.01(d) in excess of the amount of the Indemnity Escrow Cap at Closing; provided, however, that the foregoing limitation shall not apply in the case of (A) a claim for any breach of any Purchaser Fundamental Representation, (B) a claim pursuant to Section 8.01(d)(ii) or (C) in the case of Fraud.

(v) In the event of any indemnification resulting from a breach of any Company Fundamental Representation or pursuant to Section 8.01(b)(ii) (other than a claim brought based on the failure to provide notice of a breach of a representation and warranty (other than any Company Fundamental Representation) pursuant to Section 5.05), Section 8.01(b)(iii), Section 8.01(b)(iv) or Section 8.01(b)(v), the Purchaser Indemnified Parties must first make a claim against the Indemnity Escrow Amount and, to the extent funds therein are insufficient to satisfy the full amount of Losses arising from such claims, then the Purchaser Indemnified Parties may bring a claim against the Sellers (severally and not jointly), with each such Seller only being responsible for its Allocation Percentage of any indemnifiable Losses.

(vi) In the event of any indemnification claim pursuant to Section 8.01(c), the Purchaser Indemnified Parties shall be entitled to indemnification solely from the Seller in breach of such representation, warranty, covenant, agreement or other provision pursuant to Section 8.01(c), and shall not be entitled to bring a claim against the Indemnity Escrow Account or any non-breaching Seller.

(vii) In no event shall a Seller be liable hereunder for an amount that exceeds the total consideration received by such Seller with respect to its Shares pursuant to this Agreement.

(viii) For purposes of Section 8.01(b), Section 8.01(c), Section 8.01(d) and this Section 8.01(e), breaches of representations and warranties in Article III and Article IV, as applicable, and the calculation of any Losses relating thereto will be determined without giving effect to any "material", "in all material respects", "Company Material Adverse Effect", "Purchaser Material Adverse Effect" or similar qualifications; provided, however that this Section 8.01(e)(viii) shall not apply to any of the Excluded Materiality Qualifiers.

(ix) The Purchaser Indemnified Parties shall not be entitled to indemnification pursuant to Section 8.01(b)(v) unless and until the Purchaser Indemnified Parties have exhausted the Restoration Escrow Funds, and the Purchase Indemnified Parties agree that any claim for indemnification under Section 8.01(b)(v) shall first be satisfied by the Restoration Escrow Funds. Subject to the immediately preceding sentence, in no event shall the Purchaser Indemnified Parties be entitled to indemnification pursuant to Section 8.01(b)(v) in excess of the amount of Two Hundred Thousand Dollars ($200,000.00) (the "Restoration Cap") with respect to the cost of undertaking and completing the actions described in the referenced restoration plan. For the avoidance of doubt, any claim for indemnification pursuant to Section 8.01(b)(v) with respect to any Losses other than the costs of undertaking and completing the actions described in such restoration plan shall not be limited to the Restoration Cap.

(f) Determination of Loss; Mitigation

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(i) The amount of any indemnifiable Losses under Section 8.01(b) shall be calculated net of any amounts actually recovered by the Indemnitee or any Affiliate thereof with respect thereto from any third party with respect thereto (net of any collection costs) under, or pursuant to, any insurance policy. If after an Indemnitee has received indemnification payments pursuant to Section 8.01(b) such Indemnitee (or its Affiliates) actually recovers cash (net of any collection costs) under, or pursuant to, any insurance policy relating to the claim or matter for which an indemnification payment was previously received, then such Indemnitee shall promptly pay to the applicable Indemnitor(s) the amount of such insurance proceeds (up to the amount of the prior payments to such Indemnitee by such Indemnitor(s)).

(ii) The amount of any indemnifiable Loss under Section 8.01(b) shall be calculated net of any net Tax benefit arising from the incurrence or payment of any Loss actually realized by any Purchaser Indemnified Party in the taxable year such Loss is incurred, as calculated on a with and without basis. If Purchaser, the Company, its Subsidiaries and/or any of their respective Affiliates realizes a Tax benefit arising from the incurrence or payment of any Loss and such Tax benefit was not included in the computation of such Loss, the Purchaser shall within ten (10) days of filing the Tax Return claiming the Tax benefit (or, to the extent the Tax benefit is in the form of a refund, within ten (10) days of receiving the refund from the applicable Tax authority) pay to the Sellers Representatives (for the benefit of the Sellers) the amount of such Tax benefit.

(iii) Each party hereto shall take commercially reasonable steps to mitigate any of its Losses as promptly as reasonably practicable upon becoming aware of any event which would reasonably be expected to, or does, give rise to an indemnification claim under this Section 8.01.

(iv) Losses shall be determined without duplication of any other Loss for which an indemnification claim has been made or could be made under any other representation, warranty, covenant or agreement. An Indemnitee shall not be entitled to recover more than once, directly or indirectly, for the same Loss.

(g) Manner of Payment. Any indemnification of the Purchaser Indemnified Parties or the Seller Indemnified Parties pursuant to this Section 8.01 shall be effected by wire transfer of immediately available funds from the applicable Seller(s) or Purchaser, as the case may be, to an account designated in writing by the applicable Purchaser Indemnified Party or Seller Indemnified Party, as the case may be, within five (5) days after a determination thereof that is binding on the Indemnitor; provided, however, that any indemnification owed by any Seller to the Purchaser Indemnified Parties pursuant to Section 8.01(b) (other than in the case of a breach of a Company Fundamental Representation or pursuant to Section 8.01(b)(ii) (other than a claim brought based on the failure to provide notice of a breach of a representation and warranty (other than any Company Fundamental Representation) pursuant to Section 5.05), Section 8.01(b)(iii), Section 8.01(b)(iv) or Section 8.01(b)(v)) shall be satisfied exclusively out of the Indemnity Escrow Amount.

(h) Defense of Third Party Claims

(i) . Any Person making a claim for indemnification under this Section 8.01 (any such Person, an "Indemnitee") shall notify the indemnifying party (such party, an "Indemnitor") of the claim in writing promptly after receiving written notice of any Claim against it (if by a third party) in no event later than ten (10) Business Days after such Indemnified Party becomes aware of such third party claim, describing the Claim, the amount thereof (if known and quantifiable) and the basis thereof; provided, that failure to give such notification on a timely basis shall not affect the indemnification provided hereunder except to the extent, and then only to the extent, the Indemnifying Party shall have been actually and materially prejudiced as a result of such failure. Any Indemnitor shall be entitled to participate in the defense of such Claim giving rise to an Indemnitee's claim for indemnification at such Indemnitor's expense, and at its option (subject to the limitations set forth below) shall be entitled to assume the defense thereof by appointing a counsel reasonably acceptable to the Indemnitee to be the lead counsel in connection with such defense (with the fees and expenses of such counsel being borne by the Indemnitor); provided, that prior to the Indemnitor assuming control of such defense it shall first verify to the Indemnitee in writing that such Indemnitor shall be fully responsible (with no reservation of any rights) for all Losses relating to such claim for indemnification and that it shall provide full indemnification (whether or not otherwise required hereunder) to the Indemnitee with respect to such Claim giving rise to such claim for indemnification hereunder, subject to the limitations set forth in Sections 8.01(e) and 8.01(n); and provided, further, that:

(i) the Indemnitee shall be entitled to participate in the defense of such Proceeding or other claim and to employ counsel of its choice for such purpose; provided, that the fees and expenses of such separate counsel shall be borne by the Indemnitee (other than any fees and expenses of such separate counsel that are incurred prior to the date the Indemnitor has notified the Indemnitee that it intends to assume control of such defense which, notwithstanding the foregoing, shall be borne by the Indemnitor, and except that the Indemnitor shall pay all of the fees and expenses of such separate counsel if the Indemnitee has been advised by counsel that a reasonable likelihood exists of a material conflict of interest between the Indemnitor and the Indemnitee);

(ii) the Indemnitor shall not be entitled to assume control of such defense (unless otherwise agreed to in writing by the Indemnitee) and shall pay the reasonable fees and expenses of counsel retained by the Indemnitee if (1) the

claim for indemnification relates to or arises in connection with any criminal or quasi-criminal Claim; (2) the Claim seeks an injunction or equitable relief against the Indemnitee; (3) the Indemnitee has been advised by counsel that a reasonable likelihood exists of a conflict of interest between the Indemnitor and the Indemnitee; (4) upon petition by the Indemnitee, the appropriate court rules that the Indemnitor failed or is failing to vigorously prosecute or defend such Claim; (5) the Claim is related to Taxes; or (6) the Indemnitee reasonably believes that the Losses relating to the third-party Claim would not exceed the Deductible or would exceed the maximum amount that the Indemnitee could then be entitled to recover for such Claim under the applicable provisions of Section 8.01(e);

(iii) if the Indemnitor shall control the defense of any such Claim, the Indemnitor shall obtain the prior written consent of the Indemnitee, which consent shall not be unreasonably withheld, conditioned or delayed, before entering into any settlement of such Claim if, pursuant to or as a result of such settlement, injunctive or other equitable relief will be imposed against the Indemnitee or if such settlement does not expressly and unconditionally release the Indemnitee from all liabilities (monetary or otherwise) with respect to such Claim, with prejudice;

(iv) if the Indemnitee is a Purchaser Indemnified Party with respect to any third-party Claim, the Indemnitee may not settle or compromise any third-party Claim or consent to the entry of any judgment in favor of any third party with respect to which indemnification is being sought hereunder without the prior written consent of the Sellers Representatives, acting on behalf of the Sellers, such consent not to be unreasonably withheld, conditioned or delayed; and

(v) the Indemnitee (if the Indemnitor has assumed the defense of a third-party Claim) or the Indemnitor (if the Indemnitor has not or is not permitted to assume the defense of a third-party Claim) shall reasonably assist and cooperate in good faith in managing such defense. Such assistance and cooperation shall include retaining and providing reasonable access during normal business hours to (y) all books, records and other documents (including relevant work papers, memoranda, financial statements, Tax Returns, Tax schedules and work papers, Tax rulings, and other determinations, etc., in each case, of the Company or its Subsidiaries) relating to or containing information relevant to such claim in their possession and (z) employees, accountants and other professional advisors.

(j) Direct Claims. Any claim by an Indemnitee on account of Losses which do not result from a third-party Claim (a "Direct Claim") will be asserted by giving the Indemnitor reasonably prompt written notice thereof (such notice, a "Direct Claim Notice"). A Direct Claim Notice will describe the Direct Claim in reasonable detail and indicate the estimated amount of Losses (if known and quantifiable) that have been or may be sustained by the Indemnitee. The Indemnitee shall reasonably cooperate and assist the Indemnitor in determining the validity of any claim for indemnity by the Indemnified Party and in otherwise resolving such matters. Such assistance and cooperation shall include retaining and providing the Sellers Representatives and their Representatives reasonable access during normal business hours to (y) all books, records and other documents (including relevant work papers, memoranda, financial statements, Tax Returns, Tax schedules and work papers, Tax rulings, and other determinations, etc., in each case. of the Company or its Subsidiaries) relating to or containing information relevant to such claim in their possession and (z) the Purchaser's and the Company's (and the Company's Subsidiaries') employees, accountants and other professional advisors (including making the Company's chief financial officer, accountants and attorneys reasonably available to respond to reasonable written or oral inquiries of the Sellers Representatives and their Representatives). The Indemnitee and the Indemnitor may discuss such Direct Claim for a period of thirty (30) days from the date the Indemnitor receives such Direct Claim Notice (such period, or such longer period as agreed in writing by the parties, is hereinafter referred to as the "Discussion Period"), and all such discussions (unless otherwise agreed by the Indemnitee and the Indemnitor) shall be governed by Rule 408 of the Federal Rules of Evidence and any applicable similar Law. If the Direct Claim that is the subject of the Direct Claim Notice has not been resolved prior to the expiration of the Discussion Period, the Indemnitor and the Indemnitee may submit the dispute for resolution to a court of competent jurisdiction in accordance with Sections 10.11 and 10.17 hereof and each will be free to pursue such remedies as may be available to them on the terms and subject to the provisions of this Agreement.

(k) Treatment of Indemnification Payments

(l) . The parties agree that any indemnification payments made pursuant to this Agreement shall be treated for Tax purposes as an adjustment to the Final Cash Purchase Price, unless otherwise required by applicable Law.

(m) Exclusive Remedy. From and after the Closing, except (i) as provided in Section 1.05, (ii) for all equitable remedies under this Agreement, or (iii) in the case of Fraud, the indemnification provided for under this Section 8.01 shall be the sole and exclusive remedy of the parties, whether in contract, tort or otherwise, for all matters arising out of or relating to this Agreement and the transactions contemplated hereby, including for any inaccuracy or breach of any representation, warranty, covenant or agreement set forth herein or in any certificate or instrument delivered in connection herewith.

(n) Other limitations.

(i) In no event shall any Purchaser Indemnified Party be entitled to recover or make a claim against the Indemnity Escrow Amount or any Seller, regardless of the legal theory under which such liability or obligation may be sought to be imposed, whether sounding in contract or tort, or whether at law or in equity, or otherwise, for any amounts in respect of punitive, consequential, special or exemplary damages, except (A) in each case to the extent such are actually

paid to an unrelated third party as a result of a final non-appealable judgment against such Purchaser Indemnified Party or (B) in the case of consequential damages, to the extent such damages are reasonably foreseeable.

(ii) Except for Losses resulting from a breach of the representations or warranties contained in Sections 3.08(e), 3.08(i), 3.08(j), 3.08(k), 3.08(n), 3.08(q) and 3.08(r), the Purchaser Indemnified Parties shall have no rights to recover from the Indemnity Escrow Amount for Losses consisting of or relating to Taxes with respect to any Post-Closing Tax Period as a result of any breach of the representations and warranties set forth in Section 3.08.

(iii) No Purchaser Indemnified Party shall have the right to recover under Section 8.01 with respect to any Loss or alleged Loss to the extent the matter forming the basis for such Loss or alleged Loss shall have been taken into account in the determination of Net Working Capital, Indebtedness, Cash on Hand or Seller Transaction Expenses (it being understood, without limiting the foregoing, that the Sellers shall not be liable pursuant to this Article VIII to the extent an item was substantially resolved by the Dispute Resolution Firm in connection with the determination of Net Working Capital, Indebtedness, Cash on Hand or Seller Transaction Expenses).

(iv) No breach of any representation, warranty, covenant or agreement contained herein shall give rise to any right on the part of the Purchaser or the Merger Sub 1, after the Closing, to rescind this Agreement or any of the transactions contemplated hereby.

(o) Escrow Arrangements; Distribution of the Escrow Fund.

(i) Subject to the following requirements, the Indemnity Escrow Account shall be in existence immediately following the Closing and shall terminate at 11:59 p.m., Central time, on the twenty-four month anniversary of the Closing Date (such period, the "Indemnity Escrow Survival Period").

(ii) Within three (3) Business Days following the Initial Release Date, Purchaser and the Sellers Representatives shall jointly instruct the Escrow Agent to distribute from the Indemnity Escrow Account to the Sellers Representatives (for distribution to the Sellers in accordance with their respective Allocation Percentages) an amount equal to Eight Million Dollars ($8,000,000.00) (the "Initial Escrow Release Amount"), less any amounts previously disbursed from the Indemnity Escrow Account in connection with resolved indemnification Claims hereunder; provided, however, that if Purchaser has provided the Escrow Agent and the Sellers Representatives with written notice that one or more claims for indemnification hereunder have been asserted pursuant to this Article VIII and not satisfied (by agreement of the parties or otherwise) ("Unresolved Claims") as of the Initial Release Date, then the Escrow Agent shall retain in the Indemnity Escrow Account and withhold from such distribution under this Section 8.01(o)(ii) the amount of any such Unresolved Claims.

(iii) Within three (3) Business Days following the expiration of the Indemnity Escrow Survival Period, Purchaser and the Sellers Representatives shall jointly instruct the Escrow Agent to distribute any remaining amount in the Indemnity Escrow Account to the Sellers Representatives (for distribution to the Sellers in accordance with their respective Allocation Percentages); provided, however, that if Purchaser has provided the Escrow Agent and the Sellers Representatives with written notice that one or more claims for indemnification hereunder have been asserted pursuant to this Article VIII and that such claims remain Unresolved Claims as of the last day of the Indemnity Escrow Survival Period, then the Escrow Agent shall retain in the Indemnity Escrow Account and withhold from such distribution under this Section 8.01(o)(iii) the amount of any such Unresolved Claims.

(iv) Promptly following the final resolution of any Unresolved Claim, Purchaser and Sellers Representatives shall furnish the Escrow Agent with joint written instructions directing the Escrow Agent to deliver to the applicable Purchaser Indemnified Party from the Indemnity Escrow Account an amount consistent with such resolution, and the Escrow Agent shall otherwise deliver the remaining amount in the Indemnity Escrow Account pursuant to Section 8.01(o)(ii) or Section 8.01(o)(iii), as applicable; provided that, for the avoidance of doubt, in no event will more than the Initial Escrow Release Amount, less the amount of any resolved indemnification Claims, be delivered to the Sellers Representatives (on behalf of the Sellers) prior to the Indemnity Escrow Survival Period. In the event any Unresolved Claim is finally resolved following the expiration of the Indemnity Escrow Survival Period, the Purchaser shall instruct the Escrow Agent to immediately distribute to the Sellers Representatives (for distribution to the Sellers in accordance with their respective Allocation Percentages) the portion of the Indemnity Escrow Account, if any, not required to satisfy such Unresolved Claims (it being understood that from and after the release of the Indemnity Escrow Amount to the Sellers Representatives from the Indemnity Escrow Account in accordance with the Escrow Agreement, such Indemnity Escrow Amount shall no longer be available to satisfy claims under Section 8.01(b) of this Agreement (other than in the case of a breach of a Company Fundamental Representation or pursuant to Section 8.01(b)(ii) (other than a claim brought based on the failure to provide notice of a breach of a representation and warranty (other than any Company Fundamental Representation) pursuant to Section 5.05), Section 8.01(b)(iii), Section 8.01(b)(iv) or Section 8.01(b)(v)) and Purchaser Indemnified Parties shall not seek payment directly from Sellers in satisfaction of their respective indemnification obligations with respect to such claims pursuant to Section 8.01(b) (other than in the case of a breach of a Company Fundamental Representations or pursuant to Section 8.01(b)(ii) (other than in the case of a breach of a Company Fundamental Representation or pursuant to Section 8.01(b)(ii) (other than a claim brought based on the failure to provide

notice of a breach of a representation and warranty (other than any Company Fundamental Representation) pursuant to Section 5.05), Section 8.01(b)(iii), Section 8.01(b)(iv) or Section 8.01(b)(v))).

(v) Notwithstanding anything to the contrary in this Agreement, the Escrow Agent shall be entitled to deduct and withhold from any funds in the Indemnity Escrow Account deliverable pursuant to this Agreement to any Seller such amounts as are required to be deducted or withheld therefrom under any provision of federal, state, local or foreign Tax law or under any applicable legal requirement. To the extent that such amounts are so deducted or withheld and paid to the appropriate Governmental Authority, such amounts shall be treated for all purposes as having been paid to the Person to whom such amounts would otherwise have been paid.

(p) Letters of Transmittal. The Purchaser agrees to be bound by the acknowledgments, disclaimers and agreements set forth in Section 3(h) of each Letter of Transmittal executed and delivered by any Seller.

2.02 Tax Matters

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(a) Tax Treatment. The consummation of the Transactions, as part of an integrated plan, is intended to be treated as a "reorganization" pursuant to Sections 368(a)(1)(A) and 368(a)(2)(D) of the Code and the regulations promulgated thereunder. Each of the parties hereto adopts this Agreement, as well as any other agreements entered into pursuant to this Agreement, as a plan of reorganization within the meaning of Treasury Regulation Section 1.368-2(g) and Section 1.368-3(a). In the event that the consummation of the Transactions does not qualify as a reorganization under Section 368(a) of the Code, the parties intend to treat the Merger and the Second Merger as separate transactions for U.S. Federal income Tax purposes not subject to the step transaction doctrine pursuant to Rev. Ruling 90-95, 1990-2 C.B. 67. If any party hereto shall receive notice of any audit or other Tax proceeding by any Tax authority that involves, or may reasonably be expected to involve, a review or examination of such treatment, then such party shall notify each of the other parties, as promptly as possible, of such audit or other Tax proceeding. Notwithstanding anything herein to the contrary, Purchaser shall have the right to control any such audit or other Tax proceeding that is related to or could have an effect on the intended treatment of the Transactions as a "reorganization" pursuant to Sections 368(a)(1)(A) and 368(a)(2)(D) of the Code and the regulations promulgated thereunder; provided, however, (i) the Sellers Representatives shall have the right to participate in any such audit or other Tax proceeding, at their own expense, (ii) Purchaser shall keep the Sellers Representatives reasonably informed of the status of such audit or other Tax proceeding (including providing the Sellers Representatives with copies of all written correspondence regarding such audit or other Tax proceeding) and (iii) Purchaser shall not settle or otherwise agree to a final determination with respect to an audit or other Tax proceeding without the prior written consent of Sellers Representatives, which shall not be unreasonably withheld, conditioned or delayed.

(b) Straddle Periods. In the case of any Straddle Period, the amount of any Taxes based on or measured by income, sales, payroll or receipts of the Company and its Subsidiaries for the Pre-Closing Tax Period shall be determined based on an interim closing of the books as of the close of business on the Closing Date, and the amount of other Taxes of the Company and its Subsidiaries for a Straddle Period which relate to the Pre-Closing Tax Period shall be deemed to be the amount of such Tax for the entire taxable period multiplied by a fraction the numerator of which is the number of days in the taxable period ending on the Closing Date and the denominator of which is the number of days in the Straddle Period.

(c) Responsibility for Filing Tax Returns. The Company shall prepare and cause to be filed all Tax Returns of the Company and its Subsidiaries which are due prior to or on the Closing Date (the "Pre-Closing Returns"). At least fifteen (15) days prior to the date on which each such Pre-Closing Return is filed, the Company shall submit such Pre-Closing Return to the Purchaser for the Purchaser's review, comment and consent, and the Company shall consider in good faith any reasonable and timely comments provided by the Purchaser. The Purchaser shall prepare or cause to be prepared and file or cause to be filed all Tax Returns for the Company and its Subsidiaries for all taxable periods ending prior to or including the Closing Date, the due date of which (including extensions) is after the Closing Date but only if not filed on or prior to the Closing. All such Tax Returns shall be prepared and filed consistent with the past practice of the Company and its Subsidiaries, except as otherwise required by applicable law. At least fifteen (15) days prior to the date on which each such Tax Return is filed, the Purchaser shall submit such Tax Return to the Sellers Representatives for the Sellers Representatives' review and comment, and the Purchaser shall consider in good faith any reasonable and timely comments provided by the Sellers Representatives.

(d) Transfer Taxes. The Purchaser, on the one hand, and the Sellers, on the other hand, will each be responsible for 50% of all transfer, documentary, sales, use, stamp, registration and other such Taxes, and all conveyance fees, recording charges and other fees and charges (including any penalties and interest) incurred in connection with consummation of the transactions contemplated by this Agreement (collectively, "Transfer Taxes"). The Sellers agree to cooperate with the Purchaser in the filing of any returns with respect to the Transfer Taxes, including promptly supplying any information in their possession that is reasonably necessary to complete such returns.

(e) Filing and Amendment of Tax Returns. Without the prior written consent of the Sellers Representatives (such consent not to be unreasonably withheld, conditioned or delayed), the Purchaser will not (i) amend or permit any of the Company or any of its Subsidiaries to amend any Tax Return relating to a taxable period ending on or prior to the Closing Date

if such amendment could reasonably be expected to result in an indemnification obligation of Sellers for Taxes under Section 8.01(b) or (ii) make or change any Tax election or accounting method with respect to, or that has retroactive effect to, any Pre-Closing Tax Period, in each case, unless otherwise required by applicable Law.

(f) No Section 338 Election. The Purchaser shall not make any election under Code Section 338 (or any similar provision under state, local, or foreign law) with respect to the acquisition of the Company and its Affiliates.

(g) Tax Refunds. Except to the extent (i) reflected as an asset in the final calculation of Net Working Capital, (ii) attributable to a Tax attribute arising in a taxable period (or portion thereof) beginning after the Closing Date or (iii) attributable or related to any taxable year ending on or after December 31, 2012, the Sellers Representatives (on behalf of the Sellers) shall be entitled to any Tax refunds of the Company or its Subsidiaries (net of any Taxes thereon and any expenses imposed with respect thereto) that are received by the Purchaser, the Company or any Subsidiary after the Closing Date and that relate to Pre-Closing Tax Periods. The Purchaser shall pay over to the Sellers Representatives (on behalf of the Sellers) any such refund within fifteen (15) days after actual receipt of such refund against Taxes. All such Tax refund will be claimed in cash rather than as a credit against future Tax liabilities. If the amount of any such Tax refunds is subsequently determined by any Governmental Authority, in a final determination, to be less than the amount paid by the Purchaser pursuant to this Section 8.02(g), the Sellers Representatives shall promptly pay to the Purchaser the amount of any such disallowed Tax refund (including any interest or penalties in respect of such disallowed amount owed to any Governmental Authority).

(h) Closing of Tax Period. The parties hereto shall, to the extent permitted or required under applicable Law, treat the Closing Date as the last day of the taxable period of the Company for all Tax purposes, and the Purchaser shall cause the Company to join Purchaser's "consolidated group" (as defined in Treasury Regulation Section 1.1502-76(h)) for federal income Tax purposes, effective on the day after the Closing Date.

(i) Cooperation. Each of Purchaser, Merger Sub 1, Merger Sub 2 (and the officers thereof) shall reasonably cooperate with the Company, KHH and any other legal counsel of the Company to provide any information reasonably necessary in order for KHH or such other legal counsel to provide an opinion, dated the Closing Date, to the Company to the effect that the Merger and the Second Merger will be treated as a reorganization within the meaning of Sections 368(a)(1)(A) and 368(a)(2)(D) of the Code and the regulations promulgated thereunder. Such cooperation shall include the execution and delivery to KHH or such other counsel, in each case acting as tax counsel to the Company, of customary tax representation letters or certificates of such officers substantially in the form and at such time or times as may be reasonably requested by KHH or such other legal counsel, in connection with its delivery of such opinion; provided that none of Purchaser, Merger Sub 1 or Merger Sub 2 (or any of the officers thereof) will be required to deliver any such tax representation letter or certificate or make any representations or warranties to KHH or such other legal counsel if it is not legally able to do so.

2.03 Further Assurances

. From time to time, as and when requested by any party hereto and at such party's expense, any other party shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other actions as such requesting party may reasonably deem necessary or desirable to evidence and effectuate the transactions contemplated by this Agreement.

2.04 Disclosure Generally

. All Disclosure Schedules attached hereto are incorporated herein and expressly made a part of this Agreement as though completely set forth herein.

2.05 Regulatory Filings; Consents

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(a) In furtherance and not in limitation of the foregoing, each of the Purchaser and the Company shall make, as promptly as reasonably practicable (and in any event within ten (10) Business Days after the date of this Agreement) an appropriate filing of a Notification and Report Form pursuant to the HSR Act with respect to the transactions contemplated hereby. Each of the Sellers Representatives, the Company and Purchaser shall use its reasonable best efforts to supply as promptly as reasonably practicable any additional information and documentary material that may be reasonably requested pursuant to the foregoing, and use its reasonable best efforts to take all other actions necessary to cause the expiration or termination of the applicable waiting periods regarding the foregoing as soon as reasonably practicable. The Purchaser shall pay all filing fees to be paid by the Purchaser and the Company pursuant to this Agreement under the HSR Act and under any such other Laws.

(b) Except as prohibited by applicable Law or Order, each of the Purchaser, the Sellers Representatives and the Company shall use its reasonable best efforts to (i) cooperate in all respects with each other in connection with any filing or submission with a Governmental Authority in connection with the transactions contemplated hereby and in connection with any investigation or other inquiry by or before a Governmental Authority relating to the transactions contemplated hereby, (ii) promptly inform the other parties of (and, if in writing, supply to the other parties' legal counsel) any communication, other

than any ministerial communications, received by such party from, or given by such party to, the Federal Trade Commission, the Antitrust Division of the Department of Justice, or any other similar Governmental Authority, in each case regarding any of the transactions contemplated hereby, (iii) consult with each other prior to taking any material position with respect to the filings under the HSR Act in discussions with or filings to be submitted to any Governmental Authority, (iv) permit the other parties' legal counsel to review and discuss in advance, and consider in good faith the views of the other parties in connection with, any analyses, presentations, memoranda, briefs, arguments, opinions and proposals to be submitted to any Governmental Authority with respect to filings under the HSR Act, and (v) coordinate with the other parties' legal counsel in preparing and exchanging such information and promptly provide the other parties' legal counsel with copies of all filings, presentations or submissions (and a summary of any oral presentations) made by such party with any Governmental Authority relating to this Agreement or the transactions contemplated hereby under the HSR Act, which may be redacted for confidential information. Notwithstanding anything to the contrary herein, Purchaser shall, on behalf of the parties, have control over and lead the strategy for obtaining any clearances required in connection with the transactions contemplated hereby and shall take the lead in all meetings and communications with any Governmental Authority in connection with obtaining such clearances and in any litigation under the HSR Act or any similar competition Law; provided, however, that Purchaser shall, to the extent reasonably practicable, consult in advance with the Sellers Representatives and the Company and in good faith take the Sellers Representatives' and the Company's views into account regarding the overall strategic direction of any such approval process, as applicable, and consult with the Company prior to taking any material substantive positions, making dispositive motions or other material substantive filings or submissions or entering into any negotiations concerning such approvals, as applicable. The parties shall take reasonable efforts to share information protected from disclosure under the attorney-client privilege, work product doctrine, joint defense privilege or any other privilege pursuant to this Section 8.05 in a manner so as to preserve the applicable privilege.

(c) Unless prohibited by applicable Law or Order or by the applicable Governmental Authority, each of the Sellers Representatives and the Company, on one hand, and Purchaser, on the other hand, shall (i) to the extent reasonably practicable, not participate in or attend any meeting, or engage in any conversation (other than ministerial conversations) with any Governmental Authority in respect of the transactions contemplated hereby without the other, (ii) to the extent reasonably practicable, give the other reasonable prior notice of any such meeting or conversation and (iii) in the event one such party is prohibited by applicable Law or Order or by the applicable Governmental Authority from participating or attending any such meeting or engaging in any such conversation, or it has not been reasonably practicable to include the non-participating party, keep such non-participating party reasonably apprised with respect thereto.

(d) Nothing in this Agreement shall obligate the Purchaser or Merger Sub 1 (including any of their Subsidiaries or Affiliates) to (i) agree to limit in any manner whatsoever or not to exercise any rights of ownership of any securities (including the Shares), or to divest, dispose of or hold separate any securities or all or a portion of their respective businesses, assets or properties or of the business, assets or properties of the Company or any Subsidiary of the Company; (ii) agree to limit in any manner whatsoever the ability of such entities (A) to conduct their respective businesses or own such assets or properties or to conduct the businesses or own the properties or assets of the Company and any Subsidiary of the Company, or (B) to control their respective businesses or operations or the businesses or operations of the Company and any Subsidiary of the Company; (iii) otherwise take or commit to take any other action that would limit the Purchaser's freedom of action with respect to, or its ability to retain or hold, directly or indirectly, any businesses, assets, equity interests, product lines or properties of the Purchaser or the Company (including any of their respective Subsidiaries), in each case to obtain all approvals, consents, clearances, expirations or terminations of waiting periods, registrations, permits, authorizations and other confirmations required directly or indirectly under the HSR Act or any similar competition Law or to avoid the commencement of any action to prohibit the transactions contemplated hereby under the HSR Act or any similar competition Law; or (iv) to contest and resist any such action or proceeding, or to avoid the entry of, or to effect the dissolution of, any injunction, temporary restraining order or other Order in any action or proceeding seeking to prohibit the transactions contemplated hereby or delay the Closing beyond the Termination Date, or to seek to have vacated, lifted, dissolved, reversed or overturned any decree, judgment, injunction or other Order, whether temporary, preliminary or permanent, that is in effect and that prohibits, prevents or restricts consummation of the transactions contemplated hereby.

(e) The Company shall give (or shall cause its Subsidiaries to give) any notices to third parties, and use, and cause its Subsidiaries to use, their commercially reasonable efforts to obtain any third party consents, including under any Contracts of the Company or its Subsidiaries, (i) necessary, proper or advisable to consummate the transactions contemplated by this Agreement or (ii) required to be disclosed in the Schedules, provided that the parties shall not be required to make any payments in connection with obtaining any such consents unless expressly required by the terms of a given Contract.

2.06 Escrow Agreement. Purchaser and the Sellers Representatives shall execute and deliver to each other, and shall use commercially reasonable efforts to cause the Escrow Agent to execute and deliver, at the Closing, the Escrow Agreement in the form attached hereto as Exhibit G.

2.07 Restrictive Legend. Each Seller acknowledges that each certificate evidencing the Purchaser Shares shall bear the following restrictive legend, either as an endorsement or on the face thereof:

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE WERE ORIGINALLY ISSUED ON _____, HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"),

OR UNDER ANY STATE SECURITIES LAWS AND MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS OR AN EXEMPTION FROM REGISTRATION THEREUNDER."

2.08 Lockup. Without the prior written consent of Purchaser, each Seller covenants and agrees, for forty-five (45) days following the Closing Date, not to offer, sell, contract to sell, pledge, assign, transfer or otherwise create any interest in or otherwise dispose of (or enter into any transaction which is designed to, or would reasonably be expected to, result in any of the foregoing) any of the Purchaser Shares acquired by such Seller pursuant to this Agreement.

2.09 Termination of 401(k) Plan. No later than the day prior to the Closing Date, the board of directors of the Company shall adopt a written consent (the form of which shall have been approved by Purchaser, whose approval shall not be unreasonably withheld, conditioned or delayed) terminating the NBI Employees' Retirement Plan, with such termination to be effective no later than the day immediately prior to the Closing Date.

ARTICLE III

DEFINITIONS

3.01 Definitions

. For purposes hereof, the following terms when used herein shall have the respective meanings set forth below:

"Accredited Investor" means an "accredited investor" as defined in Rule 501 of Regulation D under the Securities Act of 1933, as amended.

"Adjustment Calculation Time" means 11:59 p.m. Eastern time on the day immediately prior to the Closing Date.

"Affiliate" of any particular Person means any other Person controlling, controlled by or under common control with such particular Person, where "control" means the possession, directly or indirectly, of the power to direct the management and policies of a Person whether through the ownership of voting securities, contract or otherwise.

"Affiliated Group" means an affiliated group as defined in Section 1504 of the Code (or any analogous combined, consolidated or unitary group defined under state, local or foreign income Tax law) of which the Company or any or its Subsidiaries is or has been a member.

"Agreement" has the meaning set forth in the Preamble.

"Allocation Percentage" means with respect to each Seller, the percentage set forth opposite such Seller's name on the Closing Schedule, which percentage shall, except as expressly provided otherwise therein, be equal to such Seller's ownership interest in the Company as of and prior to the Closing. For the avoidance of doubt, to the extent any Optionholder does not cash pay the exercise price in connection with the exercise of such Optionholder's Options at or prior to the Closing, the Allocation Percentages shall be proportionally adjusted to account for the fact that the exercise price will be deducted from the proceeds payable hereunder to such Optionholder at the Closing and will instead be allocated to the other Sellers.

"Articles of Merger" has the meaning set forth in Section 1.01(a)(i).

"Average Purchaser Shares Price" means the average of the volume weighted averages of the trading prices of a share of Purchaser Common Stock on the New York Stock Exchange (as reported by Bloomberg L.P.) on each of the ten (10) consecutive trading days ending on (and including) July 13, 2016, which the parties agree was $34.556.

"Benefit Plans" has the meaning set forth in Section 3.13(a).

"Business" means the businesses of the Company and its Subsidiaries, taken as a whole, as currently conducted.

"Business Day" means any day that is not a Saturday, a Sunday or other day on which the Federal Reserve Bank of New York is closed.

"Cash" or "Cash on Hand" means, as of the Adjustment Calculation Time, the sum of the fair market value of (i) all cash and (ii) all cash equivalents (including deposits, marketable securities and short term investments) of the Company and its Subsidiaries, each as determined in accordance with GAAP. Cash shall (A) exclude the amounts described on Schedule 9.01(e) and (B) be (x) reduced by issued but uncleared checks and drafts of the Company and its Subsidiaries and (y) increased by checks and drafts deposited for the account of the Company and its Subsidiaries, whether or not cleared.

"Certificate of Merger" has the meaning set forth in Section 1.01(b)(i).

"Claim" means any civil, criminal or administrative action, claim, suit, petition, proceeding (including arbitration proceeding), charge, complaint, subpoena, civil investigative demand, investigation, demand, demand letter, warning letter, audit,

inquiry, notice of noncompliance or violation, or proceeding by or before any Governmental Authority or other Person.

"Closing" has the meaning set forth in Section 1.03.

"Closing Balance Sheet" has the meaning set forth in Section 1.05(b).

"Closing Date" has the meaning set forth in Section 1.03.

"Closing Payment" has the meaning set forth in Section 1.02.

"Closing Schedule" has the meaning set forth in Section 1.05(a).

"Closing Transactions" has the meaning set forth in Section 1.04.

"Code" means the Internal Revenue Code of 1986, as amended from time to time.

"Common Stock" means the Company's common stock, par value $0.01 per share.

"Company" has the meaning set forth in the Preamble.

"Company Fundamental Representations" has the meaning set forth in Section 8.01(a).

"Company Material Adverse Effect" means any change, effect, event, occurrence, state of facts or development that has been, individually or in the aggregate, materially adverse to the assets, Business, financial condition or results of operations of the Company and its Subsidiaries taken as a whole; provided, however, that none of the following shall, alone or in combination, constitute, and none of the following shall be taken into account in determining whether there has been or will be, a Company Material Adverse Effect: any change, effect, event, occurrence, state of facts or development attributable to (i) the announcement of this Agreement or the transactions contemplated by this Agreement or the identity nature or ownership of the Purchaser; (ii) conditions affecting the industry in which the Company and its Subsidiaries participate, the U.S. economy as a whole or the credit, debt, financial or capital markets in general or the markets in which the Company and its Subsidiaries operate (except to the extent such change, effect, event, occurrence, state of facts or development disproportionately affects (relative to other participants in the industry in which the Company and its Subsidiaries operate) the Company); (iii) compliance with the terms of, or the taking of any action required or contemplated by, this Agreement; (iv) any change in applicable Laws or the interpretation thereof; (v) any change in GAAP; (vi) the commencement, continuation or escalation of a war, material armed hostilities or other material international or national calamity or act of terrorism directly or indirectly involving the United States of America; (vii) changes or effects that arise from any seasonal fluctuations in the Business in the ordinary course of business; (viii) changes or effects arising from or relating to the taking of any action at the request of the Purchaser or its Affiliates and the failure to take any action if such action is prohibited by this Agreement; (ix) changes in global or United States or foreign national or regional economic, financial, regulatory or geopolitical conditions or events in general (except to the extent such change, effect, event, occurrence, state of facts or development disproportionately affects (relative to other participants in the industry in which the Company and its Subsidiaries operate) the Company); (x) force majeure events; (xi) any matter disclosed in the Disclosure Schedules; and (xii) any failure by the Sellers to meet internal or published projections, forecasts or estimates of the Sellers (provided, however, that any effect that caused or contributed to such failure to meet projections, forecasts or estimates shall not be excluded under this clause).

"Confidential Information" means all information of a confidential or proprietary nature (whether or not specifically labeled or identified as "confidential"), in any form or medium, that relates to the business, products, services, research and development, relationships, Intellectual Property and goodwill of the Company, its Subsidiaries and/or their suppliers, distributors, customers, contractors, licensors, licensees and/or other material business relations, including without limitation: (i) internal business information (including historical and projected financial information and budgets and information relating to strategic and staffing plans and practices, business, training, marketing, promotional and sales plans and practices, cost, rate and pricing structures and accounting and business methods); (ii) identities of, requirements of and specific contractual arrangements with customers, strategic partners, suppliers, vendors, licensees, licensors or other material business relations and their confidential information; (iii) trade secrets, know-how, source code and methods of operation, techniques, formulae and systems relating to the Company's products or services and data, data bases, analyses, records, reports, manuals, documentation and models and relating thereto; (iv) inventions, innovations, improvements, developments and all similar or related information (whether or not patentable); and (v) acquisition plans, targets and strategies.

"Confidentiality Agreement" has the meaning set forth in Section 5.02(a).

"Consulting Agreement" means a Consulting Agreement to be dated as of the Closing Date by and between the Company or one of its Subsidiaries and a Restricted Seller, substantially in the form as set forth on Exhibit E attached hereto.

"Contract" means any written or oral and legally binding contract, agreement, subcontract, lease, note, bond, mortgage, indenture, instrument, license, sublicense and purchase orders and any other legally binding agreement.

"D&O Indemnified Persons" has the meaning set forth in Section 6.03(a).

"Deductible" has the meaning set forth in Section 8.01(e)(i).

"Direct Claim" has the meaning set forth in Section 8.01(j).

"Direct Claim Notice" has the meaning set forth in Section 8.01(j).

"Discussion Period" has the meaning set forth in Section 8.01(j).

"Dispute Resolution Firm" has the meaning set forth in Section 1.05(b).

"Dissenting Shares" has the meaning set forth in Section 1.08.

"Effective Time" has the meaning set forth in Section 1.01(a)(i).

"Environmental Law" means all Laws and all Orders relating to pollution, protection of the Environment, or public or worker health or safety, including any Law relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, recycling or handling of any Hazardous Substance, including (i) the federal Clean Air Act, as amended; (ii) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended; (iii) the Emergency Planning and Community Right-to-Know Act of 1986, as amended; (iv) the Federal Insecticide, Fungicide & Rodenticide Act, as amended; (v) the Federal Water Pollution Control Act, as amended; (vi) the Oil Pollution Act of 1990, as amended; (vii) the federal Occupational Safety and Health Act, as amended; (viii) the Resource Conservation and Recovery Act, as amended; (ix) the Superfund Amendments and Reauthorization Act of 1986, as amended; and (x) the Toxic Substances Control Act, as amended; and, with respect to each of the foregoing clauses (i) through (x), all similar state Laws and all successor statutes thereto and the rules and regulations promulgated thereunder, all as amended and supplemented as of or prior to the Closing Date.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time.

"ERISA Affiliate" means any Person under common control with the Company within the meaning of Section 414(b), (c), (m), or (o) of the Code and any U.S. Department of Treasury or Internal Revenue Service guidance issued thereunder.

"Escrow Agent" means Wilmington Trust, N.A., a national banking association.

"Escrow Agreement" means the Escrow Agreement to be dated as of the Closing Date by and among the Sellers Representatives, the Purchaser and the Escrow Agent, substantially in the form as set forth on Exhibit G attached hereto.

"Estimated Cash on Hand" has the meaning set forth in Section 1.05(a).

"Estimated Cash Purchase Price" has the meaning set forth in Section 1.02.

"Estimated Indebtedness" has the meaning set forth in Section 1.05(a).

"Estimated Net Working Capital" has the meaning set forth in Section 1.05(a).

"Estimated Seller Transaction Expenses" has the meaning set forth in Section 1.05(a).

"Excluded Materiality Qualifiers" means any "material", "in all material respects", "Company Material Adverse Effect", "Purchaser Material Adverse Effect" or similar qualifications included in Sections 3.06 and 3.09.

"Final Cash Purchase Price" has the meaning set forth in Section 1.05(b).

"Financial Statements" has the meaning set forth in Section 3.05(a).

"Fraud" means actual fraud involving a knowing and intentional misrepresentation of a fact, or concealment of a fact, material to the transactions contemplated by this Agreement made or concealed with the intent of inducing any other party hereto to enter into this Agreement and upon which such other party has relied (as opposed to any fraud claim based on constructive knowledge, negligent misrepresentation or a similar theory) under applicable Laws with respect to torts.

"GAAP" means United States generally accepted accounting principles, as in effect from time to time, consistently applied; provided, however, that except to the extent a provision herein references GAAP in effect as of a specific date, all references herein to GAAP shall be deemed to reference United States generally accepted accounting principles, as in effect as of the date of this Agreement.

"Governmental Authority" means any federal, state, local, foreign or other governmental or administrative body, instrumentality, department or agency or any court, tribunal, administrative hearing body, arbitration panel, commission, or other similar dispute-resolving panel or body.

"Hazardous Substances" means any pollutant, contaminant, material, substance or waste defined or regulated as hazardous or toxic under, or for which standards of conduct or liability may be imposed pursuant to, Environmental Laws,

including asbestos or asbestos-containing materials, pesticides, petroleum or petroleum by-products, polychlorinated biphenyls, lead, mold, radiation, noise and odor.

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"Improvements" means all buildings, structures, improvements, fixtures, building systems and equipment, and all components thereof included in the Real Property.

"Income Taxes" means any Tax which is based upon, measured by, or calculated with respect to net income or profits.

"Indebtedness" means, without duplication, with respect to the Company and its Subsidiaries as of the Adjustment Calculation Time, directly or indirectly, (i) any indebtedness, liability or obligation for borrowed money, whether current, short-term, long-term, secured or unsecured, (ii) any indebtedness, liability or obligation evidenced by any note, bond, debenture or other similar instrument or debt security, (iii) any liabilities or obligations for the deferred purchase price of property or services with respect to which the Company or any of its Subsidiaries is liable, contingently or otherwise, as obligor or otherwise (other than trade payables incurred in the ordinary course of business), (iv) any indebtedness guaranteed by the Company or any of its Subsidiaries, (v) any liabilities or obligations under capitalized leases with respect to which the Company or any of its Subsidiaries is liable, determined on a consolidated basis in accordance with GAAP, (vi) any indebtedness or liabilities secured by a Lien on the Company's or any of its Subsidiaries' assets, (vii) any liability or obligation in respect of letters of credit or bankers' acceptances issued for the account or benefit of the Company, (viii) all liabilities and obligations arising from bank overdrafts, (ix) any liabilities and obligations created or arising under any conditional sale or other title retention agreement with respect to acquired property, (x) any obligations under indentures or arising out of any swap, option, derivative, hedging or similar arrangement, (xi) any severance obligations with respect to officers or employees of the Company or any of its Subsidiaries whose employment was terminated prior to the Closing, (xii) deferred rent, (xiii) any customer prepayment amounts, (xiv) all liabilities and obligations arising from deferred compensation arrangements and the employer portion of payroll Taxes relating thereto, (xv) the full amount, including principal and imputed interest, of the customer note payable described on Schedule 9.01(d), and (xvi) all accrued interest, make-whole amounts, breakage fees, exit fees, prepayment premiums or the like or penalties related to any of the foregoing. For the avoidance of doubt, Indebtedness shall exclude any inter-company indebtedness among the Company and any of its Subsidiaries, provided that without limiting other liabilities that are not to be included therewith, in no event shall Indebtedness include (i) any amounts included in Net Working Capital or Seller Transaction Expenses, (ii) any liabilities related to inter-company debt between the Company and any of its Subsidiaries and any Subsidiary of the Company and another Subsidiary of the Company, (iii) any liability or obligations for future royalty payments pursuant to the Contracts set forth on Schedule 9.01(a), or (iv) any fees and expenses to the extent incurred by or at the direction of the Purchaser or otherwise relating to the Purchaser's or any of its Affiliates' financing, including obtaining any consent, agreement or waiver relating thereto, for the transactions contemplated by this Agreement or any other liabilities or obligations incurred or arranged by or on behalf of the Purchaser or any of its Affiliates in connection with the transactions contemplated hereby or otherwise.

"Indemnitee" has the meaning set forth in Section 8.01(h).

"Indemnitor" has the meaning set forth in Section 8.01(h).

"Indemnity Escrow Account" means an account established by the Escrow Agent pursuant to the Escrow Agreement for purposes of indemnification payments owing by the Sellers pursuant to Section 8.01.

"Indemnity Escrow Amount" means an amount deposited at the Closing in the Indemnity Escrow Account with the Escrow Agent pursuant to the terms and conditions of the Escrow Agreement, which shall be $12,000,000.

"Indemnity Escrow Cap" has the meaning set forth in Section 8.01(e)(iii).

"Indemnity Escrow Survival Period" has the meaning set forth in Section 8.01(o)(i).

"Initial Escrow Release Amount" has the meaning set forth in Section 8.01(o)(ii).

"Initial Release Date" has the meaning set forth in Section 8.01(a).

"Insurance Policies" has the meaning set forth in Section 3.14.

"Intellectual Property" means any and all intellectual property rights in any jurisdiction throughout the world, including: (i) trademarks and service marks, trade dress and trade names, corporate names, Internet domain names, social media identifications, logos, slogans, trade dress, design rights, and other similar designations of source or origin, (together with goodwill associated with any of the foregoing), (ii) inventions (whether or not patentable), patents, patent applications and all related continuations, continuations-in-part, divisionals, reissues, re-examinations, substitutions, and extensions of them, (iii) registered and unregistered copyrights and protected or protectable rights associated with works of authorship, (iv) proprietary and confidential information, including databases, data collections, trade secrets, algorithms, formulae, processes, techniques, technical data, and know-how, (v) software, systems, networks, and social media accounts (including log-in credentials and administrator

rights), and (vi) all rights, registrations, and applications for and physical embodiment(s) or media associated with any of the foregoing.

"KHH" has the meaning set forth in Section 10.21.

"knowledge of the Company", "to the Company's knowledge" or other similar phrases means the actual knowledge of a particular fact or other matter of David Durrett (Chief Executive Officer), Erik Dall (Chief Financial Officer), Robert Kunzi (Vice President of Sales), Richard Bailey (Senior Vice President of Operations) or Michael Paye (Plant Manager) and, in each case, the knowledge such individual would reasonably be expected to have obtained of a particular fact or other matter in the course of carrying out the responsibilities and duties inherent to his or her position with the Company.

"knowledge of Purchaser", "to the Purchaser's knowledge" or other similar phrases means the actual knowledge of a particular fact or other matter of Bryan Shinn (President and Chief Executive Officer), Donald Merril (Vice President and Chief Financial Officer) and Bradford Casper (Vice President and Chief Commercial Officer) and, in each case, the knowledge such individual would reasonably be expected to have obtained of a particular fact or other matter in the course of carrying out the responsibilities and duties inherent to his or her position with the Purchaser.

"Latest Balance Sheet" has the meaning set forth in Section 3.05(a).

"Law" means any law, statute, constitution, ordinance, rule, regulation, judgment, injunction, Order, treaty, regulation, decree or other restriction of any Governmental Authority, including common law.

"Leased Real Property" has the meaning set forth in Section 3.07(b).

"Letter of Transmittal" has the meaning set forth in Section 1.01(a)(ii)(E).

"Liens" means liens, mortgages, pledges, hypothecations, community property interests, security agreements, easements, restrictions on transfer (other than restrictions imposed on the transfer of any security by applicable securities laws, security interests, charges or encumbrances of any kind or nature.

"Losses" has the meaning set forth in Section 8.01(b).

"Material Contracts" has the meaning set forth in Section 3.09(c).

"Merger" has the meaning set forth in the Recitals.

"Merger Consideration" has the meaning set forth in Section 1.02.

"Merger Sub 1" has the meaning set forth in the Preamble.

"Merger Sub 2" has the meaning set forth in the Preamble.

"Mini-Basket" has the meaning set forth in Section 8.01(e)(i).

"Net Working Capital" means the amount by which (a) the sum of the current assets of the Company and its Subsidiaries, determined on a consolidated basis in accordance with GAAP applied on a basis consistent with the methodologies, practices, estimation techniques, assumptions and principles used in the preparation of the Financial Statements, exceeds (b) the sum of the current liabilities of the Company and its Subsidiaries determined on a consolidated basis in accordance with GAAP applied on a basis consistent with the methodologies, practices, estimation techniques, assumptions and principles used in the preparation of the Financial Statements; provided, however, that (i) the current assets of the Company and its Subsidiaries shall not include Cash on Hand to the extent such is included in the calculation of the Estimated Cash Purchase Price or the Final Purchase Price, (ii) the current liabilities of the Company and its Subsidiaries shall not include Seller Transaction Expenses or any other liabilities that are included in, or relate to the liabilities included in, the definition of Indebtedness or otherwise reduce the amount of the Estimated Cash Purchase Price or the Final Cash Purchase Price, and (iii) the calculation of Net Working Capital shall not reflect or include any Income Tax assets or liabilities. A sample calculation of Net Working Capital, Estimated Cash Purchase Price and Closing flow of funds is attached, for purposes of illustration only, as Exhibit I.

"Nevada Act" means the Nevada Revised Statutes, Chapter 92A: Mergers and Exchanges of Interest.

"Non-Recourse Party" has the meaning set forth in Section 10.20.

"Objections Statement" has the meaning set forth in Section 1.05(b).

"Option Exercise Agreement" means an Option Exercise Agreement duly executed by an Optionholder, substantially in the form as set forth on Exhibit D attached hereto.

"Optionholder" or "Optionholders" means the Persons set forth on Schedule 9.01(c) under the heading "Optionholders".

"Options" means all options issued by the Company to acquire shares of Common Stock which are vested and exercisable (or will become vested and exercisable as a result of the transactions contemplated hereby) and outstanding as of immediately prior to the Closing.

"Order" means any judgment, ruling, order, decision, writ, injunction, determination, ruling or decree of, or any settlement under the jurisdiction of, any Governmental Authority.

"Owned Real Property" means all land, together with all buildings, structures, improvements and fixtures located thereon, including, without limitation, all electrical, mechanical, plumbing and other building systems; fire protection, security and surveillance systems; telecommunications, computer, wiring and cable installations; utility installations; water distribution systems; and landscaping, and all easements and other rights and interests appurtenant thereto, including, without limitation, air, oil, gas, mineral and water rights, owned by the Company or any of its Subsidiaries.

"Per Share Merger Consideration" means (i) the Final Cash Purchase Price divided by the aggregate number of Shares, plus (ii) the Stock Consideration divided by the aggregate number of Shares; provided, however, that the term Per Share Merger Consideration as used with respect to certain of the Sellers shall mean the portions of the Final Cash Purchase Price and the number of Shares set forth on Schedule 9.01(g).

"Permits" means any approval, bond, certificate of authority, operating certificate, certificate of need, accreditation, qualification, license, franchise, permit, order, registration, variance, consent, certificate or other similar authorization issued by, or otherwise granted by, any Governmental Authority or any other Person to which or by which such person is subject or bound or to which or by which any property, business, operation or right of such Person is subject or bound.

"Permitted Liens" means (i) statutory liens for current Taxes or other governmental charges not yet due and payable or the amount or validity of which is being contested in good faith by appropriate proceedings by the Company and its Subsidiaries and for which appropriate reserves have been established in accordance with GAAP; (ii) mechanics', carriers', workers', repairers' and similar statutory liens arising or incurred in the ordinary course of business for amounts which are not delinquent and which are not, individually or in the aggregate, significant, and which shall be paid in full and released at Closing; (iii) zoning, entitlement, building and other land use regulations imposed by governmental agencies having jurisdiction over the Leased Real Property which are not violated by the current use and operation of the Leased Real Property; (iv) covenants, conditions, restrictions, easements and other similar matters of record affecting title to the Leased Real Property which do not materially impair the occupancy or use of the Leased Real Property for the purposes for which it is currently used or proposed to be used in connection with the Business; (v) liens on goods in transit incurred pursuant to documentary letters of credit; (vi) liens securing rental payments under capital lease arrangements; (vii) purchase money liens entered into in the ordinary course of business for amounts that are not overdue; (viii) other Liens that are not material to the Company and its Subsidiaries taken as a whole; (ix) Liens that will be terminated at or prior to the Closing and (x) Liens set forth on Schedule 9.01(b).

"Person" means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization or a governmental entity or any department, agency or political subdivision thereof.

"Plan" has the meaning set forth in Section 3.08(m).

"Post-Closing Tax Period" means any Tax period beginning after the Closing Date and, with respect to a Straddle Period, the portion of such Tax period beginning after the Closing Date.

"Pre-Closing Distributions" means the restructuring transactions described on Schedule 9.01(f).

"Pre-Closing Returns" has the meaning set forth in Section 8.02(c).

"Pre-Closing Tax Period" means all taxable periods ending on or before the Closing Date, and the portion of the Straddle Period ending at the end of the Closing Date.

"Preliminary Closing Statement" has the meaning set forth in Section 1.05(b).

"Privileged Communications" has the meaning set forth in Section 10.21.

"Proterra" means Black River CPF M&M NBI Holdco LLC.

"Purchaser" has the meaning set forth in the Preamble.

"Purchaser Common Stock" means the common stock, par value $0.01, of the Purchaser.

"Purchaser Fundamental Representations" has the meaning set forth in Section 8.01(a).

"Purchaser Indemnified Parties" has the meaning set forth in Section 8.01(b).

"Purchaser Material Adverse Effect" means any change, effect, event, occurrence, state of facts or development that has been, or is reasonably likely to be, individually or in the aggregate, materially adverse to the assets, business, financial condition or results of operations of the Purchaser and its Subsidiaries, taken as a whole; provided, however, that none of the following shall be deemed in themselves, either alone or in combination, to constitute, and none of the following shall be taken into account in determining whether there has been or will be, a Purchaser Material Adverse Effect: any change, effect, event, occurrence, state of facts or development attributable to (i) the announcement of the transactions contemplated by this Agreement; (ii) conditions affecting the industry in which the Purchaser and its Subsidiaries participate that are not unique to the Purchaser and its Subsidiaries, the U.S. economy as a whole or the capital markets in general or the markets in which the Purchaser and its Subsidiaries operate (except to the extent such change, effect, event, occurrence, state of facts or development disproportionately affects (relative to other participants in the industry in which the Purchaser and its Subsidiaries operate) the Purchaser); (iii) compliance with the terms of, or the taking of any action required by, this Agreement; (iv) any change in applicable Laws or the interpretation thereof; (v) any change in GAAP; (vi) the commencement, continuation or escalation of a war, material armed hostilities or other material international or national calamity or act of terrorism directly or indirectly involving the United States of America and (vii) changes or effects that arise from any seasonal fluctuations in the Purchaser's business in the ordinary course of business.

"Purchaser Preferred Stock" means the Preferred Stock of Purchaser, par value $0.01 per share.

"Purchaser SEC Reports" has the meaning set forth in Section 4.15.

"Purchaser Shares" means shares of Purchaser Common Stock issued by Purchaser pursuant to the terms and conditions of this Agreement.

"Real Property" means, collectively, the Owned Real Property and the Leased Real Property.

"Real Property Permits" has the meaning set forth in Section 3.07(e).

"Related Tax Person" has the meaning set forth in Section 4.17(b).

"Representative" means, with respect to any Person, any Affiliate, director, officer, manager, partner or employee of such Person, or any financial advisor, accountant, legal counsel, consultant or other authorized agent or representative retained by such Person.

"Restoration Cap" has the meaning set forth in Section 8.01(e)(ix).

"Restoration Escrow Funds" means the cash placed into escrow by the Company pursuant to the restoration plan referenced in Schedule 3.16, Item 1, which amount was $471,000 as of April 30, 2016.

"Restricted Sellers" means each of David Durrett, Erik Dall and Robert Kunzi.

"Schedule" or "Disclosure Schedules" has the meaning set forth in Article III.

"SEC" means the United States Securities and Exchange Commission.

"Second Articles of Merger" has the meaning set forth in Section 1.01(b)(i).

"Second Effective Time" has the meaning set forth in Section 1.01(b)(i).

"Second Merger" has the meaning set forth in the Recitals.

"Second Surviving Corporation" has the meaning set forth in Section 1.01(b)(i).

"Seller" or "Sellers" means the Persons identified on Schedule 9.01(c) under the heading "Sellers".

"Seller Fundamental Representations" has the meaning set forth in Section 8.01(a).

"Seller Indemnified Parties" has the meaning set forth in Section 8.01(d).

"Seller Transaction Expenses" means the aggregate costs, fees and expenses incurred (whether or not billed or invoiced) by or on behalf of the Company or its Subsidiaries relating to the transactions contemplated hereby, including (i) the aggregate amount of fees and expenses payable to advisors and consultants (including investment bankers, lawyers and accountants) arising out of, relating to or incidental to the discussion, evaluation, negotiation and documentation of the transactions contemplated hereby or the related repayment of any Indebtedness (including Moelis & Company LLC for investment banking services for the Company and KHH for legal services to the Company) and (ii) the aggregate amount of any bonus or other similar payment (including any retention, change in control, "stay" or "sale" bonus) paid or payable to any director, manager, officer or

employee or other Affiliate of the Company or its Subsidiaries as a result of the transactions contemplated by this Agreement, including the employer's share of Taxes attributable to any such bonuses or other payments, in each case to the extent unpaid as of the Adjustment Calculation Time.

"Sellers Representatives" has the meaning set forth in the Preamble.

"Sellers Representatives Admin Expense Fund" means $200,000.

"Shares" means the shares of Common Stock issued and outstanding as of the Closing Date.

"Significant Customers" has the meaning set forth in Section 3.19.

"Stock Consideration" means that number of Purchaser Shares, rounded up to the nearest whole number, equal to the quotient determined by dividing ninety million nine hundred thousand ($90,900,000) by the Average Purchaser Shares Price.

"Stockholder Consent" has the meaning set forth in the Recitals.

"Straddle Period" means a tax period that includes, but does not end on, the Closing Date.

"Subsidiary" means, with respect to any Person, any corporation of which a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person or a combination thereof, or any partnership, limited liability company, association or other business entity of which a majority of the partnership or other similar ownership interest is at the time owned or controlled, directly or indirectly, by such Person or one or more Subsidiaries of such Person or a combination thereof. For purposes of this definition, a Person is deemed to have a majority ownership interest in a partnership, limited liability company, association or other business entity if such Person is allocated a majority of the gains or losses of such partnership, association or other business entity or is or controls the managing director or general partner of such partnership, association or other business entity.

"Surviving Corporation" has the meaning set forth in Section 1.01(a)(i).

"Target Working Capital" means $1,969,000.

"Tax" or "Taxes" means all taxes, including any federal, state, local or foreign income, gross receipts, franchise, alternative minimum, add-on minimum, sales, use, transfer, real property gains, registration, value added, excise, natural resources, severance, stamp, occupation, premium, windfall profit, environmental, customs, duties, real property, special assessment, personal property, capital stock, social security, unemployment, disability, payroll, license, escheat, employee, withholding tax or other tax of any kind whatsoever, and any similar assessments by a Governmental Authority, whether disputed or not, including any interest, penalties or additions to tax or additional amounts in respect of the foregoing, and including any obligations to indemnify or otherwise assume or succeed to the tax liability of any other Person.

"Tax Returns" means any return, report, information return or other document (including schedules or any related or supporting information) filed or required to be filed with any governmental entity or other authority in connection with the determination, assessment or collection of any Tax or the administration of any laws, regulations or administrative requirements relating to any Tax, including any amendment thereof.

"Termination Date" has the meaning set forth in Section 7.01(d).

"Transactions" has the meaning set forth in the Recitals.

"Transfer Taxes" has the meaning set forth in Section 8.02(d).

"Unresolved Claims" has the meaning set forth in Section 8.01(o)(ii).

"WARN" has the meaning set forth in Section 3.18(b).

"Willful Breach" means a material breach that is a consequence of an act or failure to act with the actual knowledge that the taking of the act or failure to act would, or would reasonably be expected to, result in a material breach.

"Working Capital Escrow Account" means an account established by the Escrow Agent pursuant to the Escrow Agreement.

"Working Capital Escrow Amount" means an amount deposited at the Closing in the Working Capital Escrow Account with the Escrow Agent pursuant to the terms and conditions of the Escrow Agreement, which shall be $500,000.00.

3.02 Other Definitional Provisions.

(a) Accounting Terms. Accounting terms which are not otherwise defined in this Agreement have the meanings given to them under GAAP. To the extent that the definition of an accounting term defined in this Agreement is inconsistent with the meaning of such term under GAAP, the definition set forth in this Agreement will control.

(b) Successor Laws. Any reference to any particular Code section or any other law or regulation will be interpreted to include any revision of or successor to that section regardless of how it is numbered or classified, provided that any reference to a Code section or other law or regulation as set forth in the representations and warranties contained in this Agreement shall be deemed in any case to reference the substantive provisions of such Code section, law or regulation as in effect on the date hereof.

ARTICLE IV

MISCELLANEOUS

4.01 Press Releases and Communications

. The initial press release announcing this Agreement, any ancillary agreements and the transactions contemplated herein shall be in substantially the form mutually agreed upon by the Sellers Representatives and the Purchaser. No other press release, public announcement or public filing related to this Agreement or the transactions contemplated herein, or prior to the Closing any other announcement or communication to the employees, customers or suppliers of the Company or its Subsidiaries, shall be issued or made by any party hereto without the joint approval of the Purchaser and the Sellers Representatives (which approval shall not be unreasonably withheld, delayed or conditioned), unless required by Law or stock exchange rules; provided that no party shall be required to obtain approval or provide materials for review to the extent that the applicable press release, announcement, public filing or communication consists of information that has previously been made public without breach of the obligations under this Section 10.01. In the event that any such additional press release, public announcement or public filing is required by or advisable under applicable Law or stock exchange rules, the party obligated to make such press release, public announcement or public filing shall use commercially reasonably efforts to provide the other party with reasonable advance notice of such requirement and the content of the proposed press release, announcement or filing and a reasonable opportunity to review and comment on such release, announcement or filing and consider in good faith any comments with respect thereto. The parties understand and agree that Purchaser or its Affiliates intend to publicly disclose the existence and terms of this Agreement and the transactions contemplated hereby subsequent to the execution of this Agreement.

4.02 Expenses

. Except as otherwise expressly provided herein, each of Sellers, the Company, the Purchaser, Merger Sub 1 and Merger Sub 2 shall pay all of their own respective fees, costs and expenses (including fees, costs and expenses of legal counsel, investment bankers, brokers and other representatives and consultants) incurred in connection with the negotiation of this Agreement, the performance of its obligations hereunder and the consummation of the transactions contemplated hereby; provided, however, that if the transactions contemplated hereby are consummated, Sellers shall bear all fees, costs and expenses of the Company and its Subsidiaries incurred in connection with the negotiation of this Agreement, the performance of their obligations hereunder and the consummation of the transactions contemplated hereby (including legal and accounting fees, costs and expenses) by virtue of the inclusion of all such fees and costs as Seller Transaction Expenses.

4.03 Notices

. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given (a) when personally delivered, (b) when transmitted via electronic mail to the e-mail address set out below if the sender on the same day sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid), (c) the day following the day (except if not a business day then the next business day) on which the same has been delivered prepaid to a reputable national overnight air courier service or (d) the third (3rd) Business Day following the day on which the same is sent by certified or registered mail, postage prepaid. Notices, demands and communications, in each case to the respective parties, shall be sent to the applicable address set forth below, unless another address has been previously specified in writing:

Notices to the Purchaser, Merger Sub 1 and Merger Sub 2 (and, after the Closing, the Surviving Corporation and the Second Surviving Corporation)

U.S. Silica Company
8490 Progress Drive, Suite 300
Frederick, Maryland 21701
Attention: Christine Marshall, General Counsel and Corporate Secretary
Telephone No.: (301) 682-0313
Email: marshall@ussilica.com

with a copy, which shall not constitute notice, to:

Kirkland & Ellis LLP
300 North LaSalle Street
Chicago, Illinois 60654
Attention: Robert M. Hayward, P.C.
Bradley Reed
Telephone No.: (312) 862-2000
Email: robert.hayward@kirkland.com
bradley.reed@kirkland.com

Notices to the Sellers, Optionholders and Sellers Representatives (and prior to Closing, the Company):

New Birmingham, Inc.
2367 Oak Alley
Tyler, Texas 75703
Attention: David Durrett
Telephone No.: (903) 944-7121
Email: david.durrett@newbirminghaminc.com

with a copy, which shall not constitute notice, to:

Kelly Hart & Hallman LLP
201 Main Street
Suite 2500
Fort Worth, Texas 76102
Attention: Evan Malloy
Travis Clardy
Telephone No: 817-332-2500
Email: evan.malloy@kellyhart.com
travis.clardy@kellyhart.com

4.04 Assignment

. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, except that neither this Agreement nor any of the rights, interests or obligations hereunder may be assigned or delegated by either the Purchaser, Merger Sub 1 or Merger Sub 2, on the one hand, and the Company or the Sellers Representatives, on the other hand, without the prior written consent of the other party; provided that Purchaser, Merger Sub 1 and Merger Sub 2 may, without the consent of any Person, assign in whole or in part their rights, interests and obligations pursuant to this Agreement to (i) one or more of their Affiliates, (ii) after the Closing, any purchaser of all or substantially all of the assets of Purchaser, the Surviving Corporation or the Second Surviving Corporation or (iii) any of their lender(s) as collateral security; provided further that, in the case of clauses (i) and (iii), such assignment shall not relieve Purchaser, Merger Sub 1 or Merger Sub 2 of any of its obligations hereunder unless the Company and Sellers Representatives consent in writing to such assignment and provided, further, that Purchaser, Merger Sub 1 or Merger Sub 2 shall provide Sellers Representatives with notice of any assignment described in clause (ii) either prior to or immediately following such assignment if such assignment occurs during the Indemnity Escrow Survival Period.

4.05 Severability

. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable Law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

4.06 References

. Capitalized terms used herein shall have the respective meanings assigned thereto herein (such definitions to be equally applicable to both the singular and plural forms and to the masculine as well as to the feminine and neuter genders of the terms defined). A term defined as one part of speech (such as a noun) shall have a corresponding meaning when used as another part of speech (such as a verb). All terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein. The table of contents and the section and other headings and subheadings contained in this Agreement and the exhibits hereto are solely for the purpose of reference, are not part of the agreement of the parties hereto, and shall not in any way affect the meaning or interpretation of this Agreement or any exhibit hereto. All references to days or months shall be deemed references to calendar days or months. All references to “$” shall be deemed references to United States dollars. Unless the context otherwise requires, any reference to a “Section,” “Exhibit,”

"Disclosure Schedule" or "Schedule" shall be deemed to refer to a section of this Agreement, exhibit to this Agreement or a schedule to this Agreement, as applicable. The words "hereof," "herein" and "hereunder" and words of similar import referring to this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. English shall be the governing language of this Agreement. The word "including" shall mean "including, without limitation". "Shall" and "will" mean "must," and shall and will have equal force and effect and express an obligation. "Writing," "written" and comparable terms refer to printing, typing, and other means of reproducing in a visible form. References herein to this Agreement mean this Agreement as from time to time amended, modified or supplemented, including by waiver or consent. Any agreement or instrument defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement or instrument as from time to time amended, modified or supplemented, including by waiver or consent.

4.07 Construction

. The language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any Person. The specification of any dollar amount or the inclusion of any item in the representations and warranties contained in this Agreement or the Disclosure Schedules or Exhibits attached hereto is not intended to imply that the amounts, or higher or lower amounts, or the items so included, or other items, are or are not required to be disclosed (including, without limitation, whether such amounts or items are required to be disclosed as material or threatened) or are within or outside of the ordinary course of business, and no party shall use the fact of the setting of the amounts or the fact of the inclusion of any item in this Agreement or the Disclosure Schedules or Exhibits in any dispute or controversy between the parties as to whether any obligation, item or matter not described or included in this Agreement or in any Schedule or Exhibit is or is not required to be disclosed (including whether the amount or items are required to be disclosed as material or threatened) or is within or outside of the ordinary of business for purposes of this Agreement. The information contained in this Agreement and in the Disclosure Schedules and Exhibits hereto is disclosed solely for purposes of this Agreement, and no information contained herein or therein shall be deemed to be an admission by any party hereto to any third party of any matter whatsoever (including, without limitation, any violation of law or breach of contract).

4.08 Amendment and Waiver

. This Agreement may be amended, and any provision of this Agreement may be waived; provided, that any such amendment or waiver shall be binding upon each Seller only if such amendment or waiver is set forth in a writing executed by Sellers Representatives, and any such amendment or waiver shall be binding upon the Company, the Purchaser, Merger Sub 1 and Merger Sub 2 only if such amendment or waiver is set forth in a writing executed by the Company, the Purchaser, Merger Sub 1 or Merger Sub 2, as the case may be. No waiver of any provision hereunder or any breach or default thereof shall extend to or affect in any way any other provision or prior or subsequent breach or default.

4.09 Complete Agreement

. This Agreement and the documents referred to herein (including the Escrow Agreement and the Confidentiality Agreement) contain the complete agreement between the parties hereto and supersede any prior understandings, agreements or representations by or between the parties, written or oral, which may have related to the subject matter hereof in any way.

4.10 Third-Party Beneficiaries

. Except as otherwise expressly provided herein, nothing expressed or referred to in this Agreement will be construed to give any Person other than the parties to this Agreement any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement; provided, however, that (a) the D&O Indemnified Persons are intended beneficiaries of, and shall have the right to enforce, the provisions set forth in Section 6.03, (b) each Seller is an intended beneficiary of, and shall have the right to enforce, the provisions set forth in Section 8.01(p), (c) each Non-Recourse Party is an intended beneficiary of, and shall have the right to enforce, the provisions set forth in Section 10.20, and (d) KHH is an intended beneficiary of, and shall have the right to enforce, the provisions set forth in Section 10.21. The representations and warranties in this Agreement are the product of negotiations among the parties hereto and are for the sole benefit of the parties hereto. Any inaccuracies in such representations and warranties are subject to waiver by the parties hereto in accordance with this Agreement without notice or liability to any other Person. In some instances, the representations and warranties in this Agreement may represent an allocation among the parties hereto of risks associated with particular matters regardless of the knowledge of any of the parties hereto. Consequently, Persons other than the parties hereto may not rely upon the representations and warranties in this Agreement as characterizations of actual facts or circumstances as of the date of this Agreement or as of any other date.

4.11 Waiver of Trial by Jury

. THE PARTIES HERETO WAIVE ANY RIGHT, TO THE FULLEST EXTENT PERMITTED BY LAW, TO A TRIAL BY JURY IN ANY ACTION, CLAIM OR PROCEEDING (I) ARISING UNDER THIS AGREEMENT OR (II) ARISING OUT OF THE TRANSACTIONS CONTEMPLATED HEREBY, REGARDLESS OF WHICH PARTY INITIATES SUCH ACTION OR PROCEEDING.

4.12 Purchaser Deliveries

. The Purchaser agrees and acknowledges that all documents or other items delivered or made available to the Purchaser or Purchaser's legal counsel in the online data room hosted on ShareFile at https://newbirminghaminc.securevdr.com at least two (2) Business Days prior to the date of this Agreement shall be deemed to be delivered or made available, as the case may be, to the Purchaser for all purposes hereunder.

4.13 Specific Performance

. Each of the Company, the Purchaser and Merger Sub 1 acknowledges and agrees that the other parties would be damaged irreparably in the event any provision of this Agreement is not performed in accordance with its specific terms or is otherwise breached. Accordingly, each of the Company, the Purchaser and Merger Sub 1 agrees that the other parties shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof in any action instituted in any court in the United States or in any state having jurisdiction over the parties and the matter in addition to any other remedy to which they may be entitled pursuant hereto. If the Closing shall not have occurred because of a breach by the Purchaser or Merger Sub 1 of its obligations under this Agreement, and all of the conditions set forth in Section 2.01 to the Purchaser's and Merger Sub 1's obligations have either been satisfied or previously waived in writing (or would have been satisfied or are capable of being satisfied but for such breach of the Purchaser's or Merger Sub 1's obligations under this Agreement), then either the Sellers Representatives or the Company shall have the right to a court order specifically enforcing the provisions of this Agreement as to which such breach applies and, in any event, to specifically force the Closing to occur. If the Closing shall not have occurred because of a breach by the Company of its obligations under this Agreement, and all of the conditions set forth in Section 2.02 to the Company's obligations have either been satisfied or previously waived in writing (or would have been satisfied or are capable of being satisfied but for such breach of the Company's obligations under this Agreement), then the Purchaser and Merger Sub 1 shall have the right to a court order specifically enforcing the provisions of this Agreement as to which such breach applies and, in any event, to specifically force the Closing to occur.

4.14 Delivery

. This Agreement and any signed agreement entered into in connection herewith or contemplated hereby, and any amendments hereto or thereto, to the extent signed and delivered by means of a facsimile machine or electronic mail, shall be treated in all manner and respects as an original contract and shall be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person. At the request of any party hereto or to any such contract, each other party hereto or thereto shall re-execute original forms thereof and deliver them to all other parties. No party hereto or to any such contract shall raise the use of a facsimile machine or electronic mail to deliver a signature or the fact that any signature or contract was transmitted or communicated through the use of facsimile machine or in electronic or digital form as a defense to the formation of a contract and each such party forever waives any such defense.

4.15 Counterparts

. This Agreement may be executed in multiple counterparts, any one of which need not contain the signature of more than one party, but all such counterparts taken together shall constitute one and the same instrument.

4.16 Governing Law

. All Claims, issues and questions concerning the construction, validity, interpretation and enforceability of this Agreement and the exhibits and schedules hereto (whether in contract or tort) that may be based upon, arise out of or relate to this Agreement or the negotiation, execution or performance of this Agreement (including any Claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement) or the transactions contemplated hereby, shall be governed by, and construed in accordance with, the laws of the State of Delaware applicable to agreements executed and performed entirely within such State, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware.

4.17 Consent to Jurisdiction

. SUBJECT TO THE PROVISIONS OF SECTION 1.05 (WHICH SHALL GOVERN ANY DISPUTE ARISING THEREUNDER), THE PARTIES AGREE THAT JURISDICTION AND VENUE IN ANY SUIT, ACTION, OR PROCEEDING BROUGHT BY ANY PARTY IN CONNECTION WITH THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREBY, OR THE PERFORMANCE OF THE OBLIGATIONS IMPOSED HEREUNDER SHALL PROPERLY AND EXCLUSIVELY LIE IN ANY FEDERAL OR STATE COURT LOCATED IN DELAWARE. EACH PARTY ALSO AGREES NOT TO BRING ANY SUIT, ACTION, OR PROCEEDING IN CONNECTION WITH THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREBY, OR THE PERFORMANCE OF THE OBLIGATIONS IMPOSED HEREUNDER IN ANY OTHER COURT. BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH PARTY IRREVOCABLY SUBMITS TO THE JURISDICTION OF SUCH COURTS FOR ITSELF AND IN RESPECT OF ITS PROPERTY WITH RESPECT TO ANY SUCH SUIT, ACTION, OR PROCEEDING. THE PARTIES IRREVOCABLY AGREE THAT VENUE WOULD BE PROPER IN SUCH COURT, AND HEREBY WAIVE ANY OBJECTION THAT ANY SUCH COURT IS AN IMPROPER OR INCONVENIENT FORUM FOR THE RESOLUTION OF SUCH SUIT, ACTION, OR

PROCEEDING. THE PARTIES FURTHER AGREE THAT THE MAILING BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, OF ANY PROCESS REQUIRED BY ANY SUCH COURT SHALL CONSTITUTE VALID AND LAWFUL SERVICE OF PROCESS AGAINST THEM, WITHOUT NECESSITY FOR SERVICE BY ANY OTHER MEANS PROVIDED BY STATUTE OR RULE OF COURT.

4.18 Prevailing Party

. If there shall occur any dispute or proceeding between the parties relating to this Agreement or the transactions contemplated hereby, the non-prevailing party shall pay all reasonable costs and fees (including reasonable attorneys' fees and expenses) of the prevailing party.

4.19 Payments under this Agreement. Each party agrees that all amounts required to be paid hereunder shall be paid in United States currency and, except as otherwise expressly set forth in this Agreement, without discount, rebate, reduction or withholding and not subject counterclaim or offset, on the dates required hereby (with time being of the essence).

4.20 Non-Recourse. This Agreement may only be enforced against, and any Claim based upon, arising out of, or related to this Agreement or the transactions contemplated hereby may only be brought against, the Persons that are expressly named as parties hereto and then only with respect to the specific obligations set forth herein with respect to such party. Except to the extent a named party to this Agreement (and then only to the extent of the specific obligations undertaken by such named party in this Agreement and not otherwise), no past, present or future director, officer, employee, incorporator, member, partner, stockholder, Affiliate, agent, attorney, advisor or Representative or Affiliate of any of the foregoing (each, a "Non-Recourse Party") shall have any liability (whether in contract, tort, equity or otherwise) for any one or more of the representations, warranties, covenants, agreements or other obligations or liabilities of any one or more of the Company, the Purchaser or Merger Sub 1 under this Agreement of or for any Claim based on, arising out of, or related to this Agreement or the transactions contemplated hereby. Without limiting the foregoing, no claim will be brought or maintained by the Purchaser or any other Purchaser Indemnified Party or any of their respective successors or permitted assigns against any Non-Recourse Party which is not otherwise expressly identified as a party to this Agreement, and no recourse will be brought or granted against any of them, by virtue of or based upon any alleged misrepresentation or inaccuracy in or breach or nonperformance of any of the representations, warranties, covenants or agreements of any party hereto set forth or contained in this Agreement or any exhibit or schedule hereto or any certificate delivered hereunder.

4.21 Representation. The parties to this Agreement acknowledges that Kelly Hart & Hallman LLP ("KHH") currently serves as counsel to both (i) the Company and its Subsidiaries on the one hand and/or (ii) the Sellers Representatives and certain of the Sellers on the other hand, in each case including in connection with the negotiation, preparation, execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement. There may come a time, including after consummation of the transactions contemplated by this Agreement, when the interests of the Sellers Representatives and/or Sellers on the one hand, and the Company and its Subsidiaries on the other hand may no longer be aligned or when, for any reason, the Sellers Representatives, the Sellers, KHH, the Company or any of its Subsidiary believes that KHH cannot any longer, or should no longer, represent both the Sellers Representatives and/or the Sellers on the one hand, and the Company and its Subsidiaries on the other hand. The parties understand and specifically agree that KHH may withdraw from representing the Company and its Subsidiaries and continue to represent the Sellers Representatives and/or the Sellers even if the interests of the Sellers Representatives and/or the Sellers on the one hand, and the interests of the Company and its Subsidiaries on the other hand, are or may be adverse, including in connection with any dispute arising out of or relating to this Agreement or the transactions contemplated by this Agreement, and even though KHH may have represented the Company and its Subsidiaries in a matter substantially related to such dispute or may be handling ongoing matters for the Company, its Subsidiaries or any of their respective Affiliates, and Purchaser, the Company and its Subsidiaries hereby consent thereto and waive any conflict of interest arising therefrom. Each of the parties further agrees that, as to all communications among KHH, the Company, its Subsidiaries, the Sellers Representatives and the Sellers relating to this Agreement or the transactions contemplated hereby, the attorney-client privilege, the expectation of client confidence and all other rights to any evidentiary privilege that attach as a result of KHH representing the Company and its Subsidiaries in connection with this Agreement and the transactions contemplated hereby shall survive the Closing and shall remain in effect, provided that any such privilege, from and after the Closing, shall belong to the Sellers Representatives and/or the Sellers and shall not pass to or be claimed by the Company, its Subsidiaries or any of their respective Affiliates. In furtherance of the foregoing, each of the parties hereto agrees to take the steps necessary to ensure that any privilege attaching as a result of KHH representing the Company or its Subsidiaries in connection with this Agreement and the transactions contemplated hereby shall survive the Closing, remain in effect and be controlled by the Sellers Representatives and/or the Sellers. As to any privileged attorney client communications between KHH on the one hand, and any of the Company or any Subsidiary on the other hand, prior to the Closing Date relating to this Agreement or the transactions contemplated hereby (collectively, the "Privileged Communications"), each of Purchaser, Merger Sub 1, Merger Sub 2, the Company and its Subsidiaries, together with any of their respective Affiliates, successors or assigns, agree that no such Person may access, use or rely on any of the Privileged Communications in any action or claim against or involving any of the parties hereto after the Closing. In addition, if the transactions contemplated by this Agreement are consummated, the Company and its Subsidiaries shall have no right of access to or control over any of KHH's records related to the transactions contemplated by this Agreement, which shall become the property of (and be controlled by) the Sellers Representatives and/or the Sellers. Furthermore, in the event of a dispute between the Sellers Representatives and/or the Sellers on the one hand, and the Company or any of its Subsidiary on the other hand, arising out of or relating to any matter in which KHH acted for them both, none of the attorney-client privilege, the expectation of client confidence

or any other rights to any evidentiary privilege will protect from disclosure to the Sellers Representatives and/or the Sellers any information or documents developed or shared during the course of KHH's representation of the Sellers Representatives and/or the Sellers on the one hand, and the Company and its Subsidiaries on the other hand, in connection with this Agreement and the transactions contemplated hereby.

* * * *

IN WITNESS WHEREOF, the parties hereto have executed this Agreement and Plan of Merger as of the day and year first above written.

Company:	NEW BIRMINGHAM, INC. By: /s/ David Durrett Its: CEO
Purchaser:	U.S. SILICA HOLDINGS, INC. By: /s/ Bryan A. Shinn Its: President & Chief Executive Officer
Merger Sub 1:	NEW BIRMINGHAM MERGER CORP. By: /s/ Bryan A. Shinn Its: President & Chief Executive Officer
Merger Sub 2	NBI MERGER SUBSIDIARY II, INC. By: /s/ Bryan A. Shinn Its: President & Chief Executive Officer
Sellers Representatives	/s/ David Durrett David Durrett /s/ Erik Dall Erik Dall

MEMBERSHIP UNIT PURCHASE AGREEMENT

by and among

U.S. SILICA COMPANY,

U.S. SILICA HOLDINGS, INC.,

SANDBOX ENTERPRISES, LLC,

THE MEMBERS OF SANDBOX ENTERPRISES, LLC

and

SANDY CREEK CAPITAL, LLC,
as Representative of the Sellers

August 1, 2016

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EXHIBITS

MEMBERSHIP UNIT PURCHASE AGREEMENT

THIS MEMBERSHIP UNIT PURCHASE AGREEMENT (this "Agreement"), dated as of August 1, 2016, is made by and among U.S. Silica Company, a Delaware corporation (the "Purchaser"), U.S. Silica Holdings, Inc., a Delaware corporation ("Parent"), Sandbox Enterprises, LLC, a Texas limited liability company (the "Company"), each of the undersigned members (each

a "Seller" and, collectively, the "Sellers") of the Company, and Sandy Creek Capital, LLC, a Texas limited liability company, in its capacity as the Sellers Representative hereunder (the "Sellers Representative"). Capitalized terms used and not otherwise defined herein have the meanings set forth in Article IX below.

WHEREAS, the Sellers own 100% of the issued and outstanding units of membership interest of the Company;

WHEREAS, subject to the terms and conditions of this Agreement, the Purchaser desires to purchase from the Sellers, and the Sellers desire to sell to the Purchaser, all of the issued and outstanding units of membership interests of the Company.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Article I

PURCHASE AND SALE OF THE UNITS

1.01 Purchase and Sale of the Units

. On and subject to the terms and conditions of this Agreement, at the Closing, the Sellers shall sell, assign, transfer and convey to the Purchaser, and the Purchaser shall purchase and acquire from the Sellers, all of the Units, free and clear of all Liens, for the consideration specified below in this Article I.

1.02 Estimated Cash Purchase Price and Stock Consideration

. The aggregate consideration for the purchase and sale of the Units pursuant to this Agreement will be (a) an amount of cash equal to (i) $75,000,000, plus (ii) the amount by which Estimated Net Working Capital exceeds Target Working Capital (or minus the amount by which Target Working Capital exceeds Estimated Net Working Capital), plus (iii) the total amount of Estimated Cash on Hand, minus (iv) the outstanding amount of Estimated Indebtedness, minus (v) the unpaid Estimated Seller Transaction Expenses (the "Estimated Cash Purchase Price") and (b) the Stock Consideration. The Estimated Cash Purchase Price will be subject to adjustment after the Closing pursuant to Section 1.05.

1.03 The Closing

. The closing of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of Kirkland & Ellis LLP located at 300 North LaSalle Street, Chicago, Illinois 60654 at 10:00 a.m. on the second (2^{nd}) business day following full satisfaction or waiver of all of the closing conditions set forth in Article II hereof (other than those to be satisfied at the Closing, but subject to the satisfaction of those conditions) or on such other date as is mutually agreeable to the Purchaser and the Sellers Representative. The date and time of the Closing are referred to herein as the "Closing Date." By mutual agreement of the parties, the Closing may take place by conference call and electronic (i.e., email/pdf) or facsimile exchange of documents.

1.04 The Closing Transactions. Subject to the terms and conditions set forth in this Agreement, the parties hereto shall consummate the following transactions (the "Closing Transactions") on the Closing Date:

(a) the Sellers Representative shall deliver to the Purchaser (i) all of the unit certificates evidencing the Units (if any) duly endorsed for transfer or accompanied by duly executed unit powers or other forms of assignment and transfer, or evidence reflecting the transfer of all Units on the unit ledger of the Company and (ii) all books and records and other property of the Company or any of its Subsidiaries in any Seller's possession or under any Seller's control;

(b) the Purchaser shall (i) deliver to the Sellers Representative (on behalf of the Sellers in accordance with their respective Allocation Percentages) an amount in cash equal to (x) the Estimated Cash Purchase Price minus (y) the Indemnity Escrow Amount and the Working Capital Escrow Amount, by wire transfer of immediately available funds to the account(s) designated by the Sellers Representative (which account(s) shall be designated by the Sellers Representative to the Purchaser in writing at least three (3) Business Days before the Closing Date) and (ii) issue or transfer, or cause to be issued or transferred, to the Sellers (in accordance with their respective Allocation Percentages) the number of Parent Shares payable as the Stock Consideration pursuant to the terms hereof, which may be represented by book-entry interests or one or more certificates at the Parent's election;

(c) the Company shall deliver to the Purchaser appropriate evidence of releases of any Liens (other than any Permitted Liens) related to the assets and properties of the Company and its Subsidiaries and payoff letters with respect to any Indebtedness set forth on the Indebtedness Payoff Schedule outstanding as of the Closing (in each case in a form reasonably satisfactory to the Purchaser);

(d) the Purchaser shall repay, or cause to be repaid, on behalf of the Company and its Subsidiaries, all amounts necessary to discharge fully the then outstanding balance of the Indebtedness (as set forth on the Indebtedness Payoff Schedule

delivered by the Sellers Representative or the Company to Purchaser at least three (3) Business Days prior to the Closing Date) by wire transfer of immediately available funds to the account(s) designated by the holders of such Indebtedness;

(e) the Purchaser shall repay, or cause to be repaid, on behalf of the Sellers, the Company and its Subsidiaries, all amounts necessary to discharge fully the then outstanding balance of all Seller Transaction Expenses, by wire transfer of immediately available funds, to the account(s) designated by each Person to whom such Seller Transaction Expenses are to be paid and delivered in writing by Sellers Representative or the Company to Purchaser at least three (3) Business Days prior to the Closing Date;

(f) the Purchaser shall deliver the Indemnity Escrow Amount and the Working Capital Escrow Amount by wire transfer of immediately available funds to the Escrow Agent;

(g) each Seller shall deliver to Purchaser at least three (3) Business Days prior to the Closing Date such information concerning the Seller as Purchaser or Parent's registrar and transfer agent may reasonably request at least five (5) Business Days prior to the Closing Date in order to issue the Parent Shares to such Seller;

(h) each of Joshua Oren, D. Merrill Cummings, Peter Glynn and Thomas Massalone shall duly execute and deliver to the Parent, and the Parent shall execute and deliver to such Persons, a Performance Share Unit Agreement substantially in the form of Exhibit D attached hereto, with each Restricted Party receiving the number of performance share units set forth on Schedule 1.04(h); and

(i) the Purchaser and the Sellers Representative or the Company, as applicable, shall make such other deliveries as are required by Article II hereof.

1.05 Purchase Price Adjustments

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(a) At least two (2) Business Days prior to the Closing Date, the Company shall deliver to the Purchaser (i) a good faith estimate of Net Working Capital (the "Estimated Net Working Capital"), Cash on Hand (the "Estimated Cash on Hand"), Indebtedness (the "Estimated Indebtedness") and Seller Transaction Expenses (the "Estimated Seller Transaction Expenses") and the resulting calculation of the Estimated Cash Purchase Price as set forth in Section 1.02 and (ii) a schedule setting forth the number of Parent Shares to be issued to each Seller as the Stock Consideration. The Estimated Cash Purchase Price shall be prepared in accordance with the definitions set forth in this Agreement and using the accounting principles, practices and procedures, with consistent classifications, judgments and estimation methodology, as were used in preparation of the Latest Balance Sheet, to the extent consistent with GAAP. If the Estimated Cash Purchase Price is a negative number, the Stock Consideration shall be reduced by the extent to which the Estimated Cash Purchase Price is negative.

(b) As promptly as possible, but in any event within seventy-five (75) days after the Closing Date, the Purchaser will deliver to the Sellers Representative (i) a consolidated balance sheet of the Company and its Subsidiaries (the "Closing Balance Sheet") and (ii) a statement showing the Purchaser's calculation of Net Working Capital, Cash on Hand, Indebtedness and Seller Transaction Expenses, and the resulting calculation of the Final Cash Purchase Price (together with the Closing Balance Sheet, the "Preliminary Closing Statement"). The Closing Balance Sheet shall be prepared in accordance with the definitions set forth in this Agreement and using the accounting principles, practices and procedures, with consistent classifications, judgments and estimation methodology, as were used in preparation of the Latest Balance Sheet, to the extent consistent with GAAP. During the thirty (30) days after delivery of the Preliminary Closing Statement, the Purchaser shall give the Sellers Representative and its accountants reasonable access to review the Company's and its Subsidiaries' books and records and work papers related to the preparation of the Preliminary Closing Statement (and, solely to the extent relevant thereto, to the Purchaser's books and records and work papers) for purposes of the Sellers Representative's review of the Preliminary Closing Statement. The Sellers Representative and its accountants may make inquiries of the Purchaser and its Subsidiaries and their respective accountants regarding questions concerning or disagreements with the Preliminary Closing Statement arising in the course of its review thereof, and the Purchaser shall use its, and shall cause its Subsidiaries to use their, commercially reasonable efforts to cause any such accountants to provide reasonable cooperation with and reasonably promptly respond to such inquiries; provided, however, that the independent accountants of Purchaser shall not be obligated to make any working papers available to Sellers Representative unless Sellers Representative has signed a customary confidentiality and hold harmless agreement relating to such access to working papers in form and substance reasonably acceptable to such independent accountants. If the Sellers Representative has any objections to the Preliminary Closing Statement, the Sellers Representative shall deliver to the Purchaser a statement setting forth in reasonable detail its objections thereto and the basis for such objections (an "Objections Statement"). If an Objections Statement is not delivered to the Purchaser within thirty (30) days after delivery of the Preliminary Closing Statement, the Preliminary Closing Statement shall be final, binding and non-appealable by the parties hereto. The Sellers Representative and the Purchaser shall negotiate in good faith to resolve any such objections, but if they do not reach a final resolution within fifteen (15) Business Days after the delivery of the Objections Statement, the Sellers Representative and the Purchaser shall submit such dispute to KPMG LLP or such other mutually acceptable dispute resolution firm (other than Ernst & Young LLP and BKD LLP) (the "Dispute Resolution Firm"). The Dispute Resolution Firm shall consider only those items and amounts which are identified in the Objections Statement as being items which the Sellers Representative and the Purchaser are unable to resolve. The Dispute Resolution Firm's

determination will be based solely on the definitions of Net Working Capital, Cash on Hand, Indebtedness and Seller Transaction Expenses, as applicable, contained in this Agreement. The Sellers Representative and the Purchaser shall use their commercially reasonable efforts to cause the Dispute Resolution Firm (who shall be acting as an expert and not as an arbitrator) to resolve all disagreements as soon as practicable and in any event within thirty (30) days after the submission of any dispute. Further, the Dispute Resolution Firm's determination shall be based solely on the submissions by the Purchaser and the Sellers Representative which are in accordance with the terms and procedures set forth in this Agreement (i.e., not on the basis of an independent review). Purchaser and the Sellers Representative will cooperate in good faith with the Dispute Resolution Firm during the term of its engagement. The resolution of the dispute by the Dispute Resolution Firm shall be final, binding and non-appealable on the parties hereto and their Affiliates. The costs and expenses of the Dispute Resolution Firm shall be allocated based upon the percentage which the portion of the contested amount not awarded to each party bears to the amount actually contested by such party in the presentation to the Dispute Resolution Firm. For example, if the Sellers Representative submits an Objections Statement for $1,000, and if the Purchaser contests only $500 of the amount claimed by the Sellers Representative, and if the Dispute Resolution Firm ultimately resolves the dispute by awarding the Sellers Representative $300 of the $500 contested, then the costs and expenses of the Dispute Resolution Firm will be allocated 60% (i.e. 300/500) to the Purchaser and 40% (i.e., 200/500) to the Sellers Representative (on behalf of the Sellers in accordance with their respective Allocation Percentages).

For purposes hereof, "Final Cash Purchase Price" (which, for the avoidance of doubt, does not include the Stock Consideration) means an aggregate amount as finally determined in accordance with this Section 1.05(b) equal to (i) $75,000,000, plus (ii) the amount by which Net Working Capital exceeds Target Working Capital (or minus the amount by which Target Working Capital exceeds Net Working Capital), plus (iii) the total amount of Cash on Hand, minus (iv) the outstanding amount of Indebtedness, minus (v) the unpaid Seller Transaction Expenses, in each case, as finally determined pursuant to this Section 1.05(b), as applicable.

(c) Post-Closing Adjustment Payment

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(i) If the Final Cash Purchase Price is greater than the Estimated Cash Purchase Price, the Purchaser shall promptly (but in any event within five (5) Business Days after the determination of the Final Cash Purchase Price in accordance with Section 1.05(b)) deliver to the Sellers Representative (on behalf of the Sellers in accordance with their respective Allocation Percentages) the amount of such excess by wire transfer of immediately available funds to an account or accounts designated in writing by the Sellers Representative. Immediately following payment of any amounts determined pursuant to Section 1.05(b) and this Section 1.05(c)(i) to be owing to the Sellers Representative (on behalf of the Sellers in accordance with their respective Allocation Percentages), the Sellers Representative and the Purchaser shall deliver joint written instructions to the Escrow Agent instructing the Escrow Agent to pay to the Sellers Representative (on behalf of the Sellers in accordance with their respective Allocation Percentages) all remaining funds in the Working Capital Escrow Account, in accordance with the terms of the Escrow Agreement.

(ii) If the Final Cash Purchase Price is less than the Estimated Cash Purchase Price, the Sellers Representative and the Purchaser shall promptly (but in any event within five (5) Business Days after the determination of the Final Cash Purchase Price in accordance with Section 1.05(b)) deliver joint written instructions to the Escrow Agent instructing the Escrow Agent to pay from the Working Capital Escrow Account (and, if the funds in the Working Capital Escrow Account are insufficient to cover such shortfall, then also from the Indemnity Escrow Account) to an account or accounts designed by the Purchaser the amount of such shortfall by wire transfer of immediately available funds to an account or accounts designated by the Purchaser. Immediately following payment of any amounts determined pursuant to Section 1.05(b) and this Section 1.05(c)(ii) to be owing to the Purchaser, the Sellers Representative and the Purchaser shall deliver joint written instructions to the Escrow Agent instructing the Escrow Agent to pay to the Sellers Representative (on behalf of the Sellers in accordance with their respective Allocation Percentages) all remaining funds (if any) in the Working Capital Escrow Account, in accordance with the terms of the Escrow Agreement. The Working Capital Escrow Account and the Indemnity Escrow Account shall be the Purchaser's sole recourse with respect to, and the exclusive source of funds for, any payments required to be made by the Sellers or the Sellers Representative pursuant to Section 1.05(b) and this Section 1.05(c).

1.06 Sellers Representative.

(a) Appointment. Each Seller hereby irrevocably constitutes and appoints the Sellers Representative, as his, her or its agent and attorney in fact to act from and after the date hereof and to do any and all things and execute any and all documents on behalf of any Seller that may be necessary, convenient or appropriate to facilitate the consummation of the transactions contemplated by this Agreement and/or the Escrow Agreement, including but not limited to: (i) execution of the Escrow Agreement and other documents and certificates pursuant to this Agreement or the Escrow Agreement; (ii) receipt of payments under or pursuant to this Agreement or the Escrow Agreement and disbursement thereof to the Sellers, in accordance with this Agreement or the Escrow Agreement and subject to the terms hereof or thereof; (iii) receipt and forwarding of notices and communications pursuant to this Agreement or the Escrow Agreement; (iv) administration of the provisions of this Agreement and the Escrow Agreement; (v) giving or agreeing to, on behalf of any or all of the Sellers, any and all consents, waivers, amendments or modifications deemed by the Sellers Representative, in its sole and absolute discretion, to be necessary or appropriate under this Agreement or the Escrow Agreement and the execution or delivery of any documents that may be necessary or appropriate in

connection therewith; (vi) amending this Agreement or the Escrow Agreement or any of the instruments to be delivered to the Purchaser pursuant to this Agreement or the Escrow Agreement; (vii) taking actions the Sellers Representative is expressly authorized to take pursuant to the other provisions of this Agreement or the Escrow Agreement; (viii) (A) dispute or refrain from disputing, on behalf of each Seller relative to any amounts to be received by such Seller under this Agreement, the Escrow Agreement or any agreements contemplated hereby or thereby, any claim made by the Purchaser under this Agreement, the Escrow Agreement or other agreements contemplated hereby or thereby, (B) negotiate and compromise, on behalf of each Seller, any dispute that may arise under, and exercise or refrain from exercising any remedies available under, this Agreement, the Escrow Agreement or any other agreement contemplated hereby or thereby, and (C) execute, on behalf of each Seller, any settlement agreement, release or other document with respect to such dispute or remedy; and (ix) engaging attorneys, accountants, agents or consultants on behalf of the Sellers in connection with this Agreement, the Escrow Agreement or any other agreement contemplated hereby or thereby and paying any fees related thereto. Sellers and Sellers Representative intend to execute an additional agreement regarding the roles, responsibilities, duties and obligations of the Sellers Representative and the Sellers ("Sellers Representative Agreement") relating to this Agreement. The intent is for both the terms of this Section 1.06 and the Sellers Representative Agreement to survive the Closing and to coexist; provided that if there is a conflict between the terms of this Section 1.06 and the Sellers Representative Agreement, the terms of this Section 1.06 shall control except as expressly set forth in this Agreement.

(b) Reliance. The Purchaser shall be fully protected in dealing with the Sellers Representative under this Agreement and may rely upon the authority of the Sellers Representative to act on behalf of the Sellers. Any payment by the Purchaser to the Sellers Representative shall be considered a payment by the Purchaser to the Sellers. The appointment of the Sellers Representative is coupled with an interest and shall be irrevocable by any Seller in any manner or for any reason. This power of attorney shall not be affected by the death, illness, dissolution, disability, incapacity or other inability to act of the principal pursuant to any applicable law.

(c) Acts of the Sellers Representative. The Sellers Representative may not resign from its capacity as the Sellers Representative at any time without the Purchaser's prior written consent.

(d) Expenses and Liabilities. Any expenses or liabilities incurred by the Sellers Representative in connection with the performance of its duties under this Agreement or the Escrow Agreement shall not be the personal obligation of the Sellers Representative but shall be payable by the Sellers based on their respective Allocation Percentage. The Sellers Representative may from time to time submit invoices to the Sellers covering such expenses and/or liabilities and, upon the request of any Seller, shall provide the Sellers with an accounting of all expenses paid.

(e) Indemnification of the Sellers Representative. The Sellers shall severally, but not jointly, indemnify and hold harmless, pro-rata based on each Seller's Allocation Percentage, the Sellers Representative from any and all losses, liabilities and expenses (including the reasonable fees and expenses of counsel) arising out of or in connection with the Sellers Representative's execution and performance (solely in its capacity as the Sellers Representative and not in its capacity as a Seller) of this Agreement.

(f) Payments. Subject to the terms of the Sellers Representative Agreement, with respect to all amounts paid to the Sellers Representative on behalf of the Sellers under this Agreement, the Sellers Representative agrees to promptly pay such amounts to the Sellers in accordance with their respective Allocation Percentages.

1.07 Withholding. Notwithstanding anything in this Agreement to the contrary, Purchaser or its designee and the Company and its Subsidiaries shall be entitled to withhold and deduct from the consideration otherwise payable pursuant to this Agreement such amounts as Purchaser or its designee or the Company and its Subsidiaries are required by law to deduct and withhold with respect to the making of such payment under the Code, applicable Treasury Regulations or any provision of federal, state, local or foreign Tax Law. To the extent that amounts are so withheld and paid over to the appropriate Tax authority, such amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding were made.

1.08 Purchase Price Allocation. Within sixty (60) days of the final determination of the Final Cash Purchase Price pursuant to Section 1.05, Purchaser shall provide Sellers Representative with an allocation of the Final Cash Purchase Price and the liabilities of the Company and its Subsidiaries (plus other relevant items) to the assets of the Company and its Subsidiaries for all Tax purposes (the "Purchase Price Allocation"), which shall be prepared in accordance with Schedule 1.08. Purchaser shall permit Sellers Representative to review and comment on the Purchase Price Allocation and shall make such revisions as are reasonably requested by the Sellers Representative. If the Sellers' Representative raises any objections during the thirty (30) day period following receipt of the Purchase Price Allocation from Purchaser, the parties shall, for the thirty (30) days thereafter, exercise good faith efforts to resolve those objections and if unable to do so within such thirty (30) day period, the parties shall submit the matter to the Dispute Resolution Firm for resolution in accordance with the procedures set forth in Section 1.05(b). Purchaser, the Company and its Subsidiaries, the Sellers' Representative and Sellers shall file all Tax Returns (including amended Tax Returns and claims for refund) and information reports in a manner consistent with the Purchase Price Allocation.

ARTICLE II

CONDITIONS TO CLOSING

2.01 Conditions to the Purchaser's and Parent's Obligations. The obligations of the Purchaser and Parent to consummate the transactions contemplated by this Agreement are subject to the satisfaction (or waiver by the Purchaser in writing) of the following conditions as of the Closing Date:

(a) (i) The representations and warranties in Article III (other than the representations and warranties in Section 3.04) and Article IIIA (other than the representations and warranties in Section 3A.03) shall be true and correct in all material respects at and as of the date of this Agreement and the Closing, in each case as though then made and without giving effect to any qualifications as to materiality or Company Material Adverse Effect (or any correlative terms or qualifiers), except for representations and warranties that speak only as of a specific date or time, which shall be true and correct in all material respects as of such date and time without giving effect to any qualifications as to materiality or Company Material Adverse Effect (or any correlative terms or qualifiers), and (ii) the representations and warranties in Section 3.04 and Section 3A.03 shall be true and correct in all respects at and as of the date of this Agreement and the Closing, in each case as though then made, except for representations and warranties that speak only as of a specific date or time, which shall be true and correct in all respects as of such date and time;

(b) the Sellers and the Company shall have performed in all material respects the covenants and agreements required to be performed by them under this Agreement at or prior to the Closing;

(c) the applicable waiting periods under the HSR Act shall have expired or been terminated;

(d) there shall not have been a Company Material Adverse Effect since the date of this Agreement;

(e) no Claim shall be pending by or before any Governmental Authority of competent jurisdiction wherein an unfavorable injunction, decision, ruling, judgment, decree or order would prohibit the performance of this Agreement or the consummation of any of the transactions contemplated hereby, declare unlawful the transactions contemplated by this Agreement or cause such transactions to be rescinded following consummation;

(f) the Escrow Agent and the Sellers Representative shall have each executed and delivered signatures to the Escrow Agreement to the Purchaser;

(g) the Company shall have delivered to the Purchaser a certificate signed by an authorized officer of the Company in the form set forth on Exhibit A-1, dated as of the Closing Date, stating that the preconditions specified in subsections (a) and (b) above, solely as they relate to the Company, have been satisfied;

(h) each Seller shall have delivered to Purchaser a certificate signed by such Seller (or, if an entity, an authorized officer of such Seller) in the form set forth on Exhibit A-2 dated as of the Closing Date, stating that the preconditions specified in subsections (a) and (b) above, solely as they relate to such Seller, have been satisfied;

(i) the Company shall have delivered to the Purchaser a certificate, substantially in the form of Exhibit F attached hereto, duly completed pursuant to Section 1.1445-11T(d) of the Treasury Regulations, certifying that (i) fifty percent (50%) or more of the value of the gross assets of the Company does not consist of "United States real property interests" within the meaning of Section 897 of the Code or (ii) ninety percent (90%) or more of the value of the gross assets of the Company does not consist of "United States real property interests" within the meaning of Section 897 of the Code and "cash or cash equivalents" within the meaning of Treasury Regulations Section 1.1445-11T(d)(1);

(j) the Company shall have delivered to the Purchaser, no later than five (5) Business Days prior to the Closing Date, (i) audited consolidated balance sheets of the Company and its consolidated Subsidiaries as of December 31, 2015 and December 31, 2014, and (ii) audited statements of income, cash flows and changes in members' equity of the Company and its consolidated Subsidiaries for the years ended December 31, 2015 and December 31, 2014, in each case, reported on by BKD LLP (without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements have been prepared in accordance with GAAP, consistently applied throughout the periods indicated, and present fairly in all material respects the consolidated financial condition and results of operations, in each case, of the applicable company and its Subsidiaries (taken as a whole) as of the dates and for the periods referred to therein;

(k) the Company shall have delivered to the Purchaser, in form satisfying the requirements of PCAOB AU Section 722, Interim Financial Information (SAS 100), no later than five (5) Business Days prior to the Closing Date, (i) unaudited consolidated balance sheets of the Company and its consolidated Subsidiaries as of June 30, 2016, and (ii) unaudited consolidated statements of income, cash flows, and changes in members' equity for each of the six (6)-month periods ended June 30, 2016 and June 30, 2015, together with the related notes thereto; and

(l) the Company shall have obtained and delivered to Purchaser (i) a written consent for the assignment of each of the Leased Real Property leases requiring such consent as a matter of law as a result of the change of control of the tenant

thereunder in connection with the transactions that are the subject of this Agreement, and if requested by Purchaser's lender, if any, a waiver of landlord liens, collateral assignment of lease or leasehold mortgage from the landlord or other party whose consent thereto is required under such Leased Real Property lease (the "Lease Consents") in form and substance reasonably satisfactory to Purchaser and Purchaser's lender, if any; (ii) an estoppel certificate with respect to each of the Leased Real Property leases, dated no more than thirty (30) days prior to the Closing Date, from the other party to such Leased Real Property lease, in form and substance reasonably satisfactory to Purchaser (the "Estoppel Certificates") and (iii) a non-disturbance agreement with respect to each of the Leased Real Property leases in form and substance satisfactory to Purchaser from each lender encumbering any real property underlying the Leased Real Property for such Leased Real Property lease (the "Non-Disturbance Agreements").

If the Closing occurs, all closing conditions set forth in this Section 2.01 which have not been fully satisfied as of the Closing shall be deemed to have been waived by the Purchaser.

2.02 Conditions to the Company's and the Sellers' Obligations

. The obligations of the Company and the Sellers to consummate the transactions contemplated by this Agreement are subject to the satisfaction or waiver of the following conditions as of the Closing Date:

(a) (i) The representations and warranties in Article IV shall be true and correct in all material respects at and as of the date of this Agreement and the Closing, in each case as though then made and without giving effect to any qualifications as to materiality or Purchaser Material Adverse Effect (or any correlative terms or qualifiers), except for representations and warranties that speak only as of a specific date or time, which shall be true and correct in all material respects as of such date and time without giving effect to any qualifications as to materiality or Purchaser Material Adverse Effect (or any correlative terms or qualifiers);

(b) the Purchaser and Parent shall have performed in all material respects the covenants and agreements required to be performed by it under this Agreement at or prior to the Closing;

(c) the applicable waiting periods under the HSR Act shall have expired or been terminated;

(d) no Claim shall be pending by or before any Governmental Authority of competent jurisdiction wherein an unfavorable injunction, decision, ruling, judgment, decree or order would prohibit the performance of this Agreement or the consummation of any of the transactions contemplated hereby, declare unlawful the transactions contemplated by this Agreement or cause such transactions to be rescinded;

(e) there shall not have been a Purchaser Material Adverse Effect since the date of execution of this Agreement;

(f) the Escrow Agent and the Purchaser shall have each executed and delivered signatures to the Escrow Agreement to the Sellers Representative;

(g) the Purchaser shall have delivered to the Sellers Representative a certificate signed by an authorized officer of Purchaser in the form set forth as Exhibit B, dated as of the Closing Date, stating that the preconditions specified in subsections (a) and (b) above have been satisfied; and

(h) the Parent shall have delivered to the Sellers Representative a copy of the Registration Rights Agreement in the form set forth as Exhibit E, duly executed by the Parent.

If the Closing occurs, all closing conditions set forth in this Section 2.02 which have not been fully satisfied as of the Closing shall be deemed to have been waived by the Sellers Representative, on behalf of the Sellers.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as set forth in the schedules accompanying this Agreement (each a "Schedule" and, collectively, the "Disclosure Schedules"), in which capitalized terms used and not otherwise defined have the meanings given to them in this Agreement, and each section of which shall be deemed to incorporate by reference all information disclosed in any other section of the Disclosure Schedules if it is readily apparent on its face based on a plain reading of such information that such disclosure is applicable to such other section of the Disclosure Schedules, the Company hereby represents and warrants to the Purchaser and Parent as of the date hereof and as of the Closing that:

3.01 Organization and Corporate Power

. The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Texas, the Company has all requisite limited liability company power and authority and all authorizations, licenses and permits necessary to own and operate its properties and assets, to carry on its businesses as now conducted and to execute and deliver this Agreement and carry out the transactions contemplated hereby, and the Company is qualified or licensed to do business in every jurisdiction in which its ownership of property or conduct of business requires it to qualify or be licensed, except where the

failure to hold such power, authority, authorizations, licenses and permits would not reasonably be expected to be, individually or in the aggregate, material to the Business. The copies of the Company's certificate of formation or organization and operating or limited liability agreement, including all amendments thereto prior to the date hereof, have been made available to the Purchaser and are true and complete. The Company is not in default under, or in violation of, any provision of its organizational documents.

3.02 Subsidiaries

. Except as set forth on Schedule 3.02, the Company does not own or hold the right to acquire any stock, partnership interest or joint venture interest or other equity ownership interest in any other Person, corporation, organization or entity or has any obligation to make any direct or indirect investment in, or capital contribution to, any Person. Each of the Company's Subsidiaries is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization, has all requisite corporate, or other legal entity, as the case may be, power and authority and all authorizations, licenses and permits necessary to own its properties and to carry on its businesses as now conducted and is qualified to do business in every jurisdiction in which its ownership of property or the conduct of its businesses as now conducted requires it to qualify, except in each such case where the failure to hold such authorizations, licenses and permits or to be so qualified would not reasonably be expected to be, individually or in the aggregate, material to the Business. All of the shares of capital stock or membership interests of each of the Company's Subsidiaries are validly issued, fully paid and nonassessable and, except as set forth on Schedule 3.02, all of the shares of capital stock or membership interests of each such Subsidiary is owned, directly or indirectly, by the Company and is, or will be upon the Closing, free and clear of all Liens (other than Permitted Liens). The copies of each such Subsidiary's articles of incorporation and bylaws (or similar governing documents or operating agreements) and all amendments thereto prior to the date hereof have been made available to the Purchaser and are true and complete.

3.03 Authorization; No Breach; Valid and Binding Agreement. The execution, delivery and performance of this Agreement and all of the other agreements and instruments contemplated hereby to which the Company is a party and the consummation of the transactions contemplated hereby or thereby have been duly and validly authorized by all requisite corporate action, and no other act or proceeding (corporate or otherwise) on the part of the Company is necessary to authorize the execution, delivery or performance of this Agreement, the other agreements contemplated hereby or the consummation of the transactions contemplated hereby or thereby. Except as set forth on Schedule 3.03, the execution, delivery and performance by the Company of this Agreement and the other agreements and instruments contemplated hereby to which the Company is a party, and the consummation of the transactions contemplated hereby and thereby, (a) do not and will not conflict with or result in any breach of, constitute a default under, or result in a violation of the provisions of the Company's or any of its Subsidiaries' certificate or articles of incorporation or organization or bylaws or operating agreement (or any equivalent organizational documents), (b) do not and will not conflict with or result in any breach of, constitute a default under, result in a violation of, result in the creation of any Lien upon any assets of the Company or any of its Subsidiaries under, or require any authorization, consent, approval, exemption or other action by or notice to any court or other Governmental Authority under, any Contract to which the Company or any of its Subsidiaries is bound, or any law, statute, rule or regulation or order, judgment or decree to which the Company or any of its Subsidiaries is subject, except, in the case of this clause (b), where the failure of any of the foregoing to be true would not reasonably be expected to be, individually or in the aggregate, material to the Business. This Agreement and each of the other agreements and instruments contemplated hereby to which the Company is a party and that is required to by the terms of this Agreement to be executed on or before the date hereof, has been duly executed and delivered by the Company and, assuming that this Agreement and each of these other agreements and instruments has been duly executed, authorized and delivered by the Purchaser and the Sellers, this Agreement and each of these other agreements and instruments constitutes a valid and binding obligation of the Company, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy laws, other similar laws affecting creditors' rights and general principles of equity affecting the availability of specific performance and other equitable remedies.

3.04 Capitalization

. Schedule 3.04 sets forth (i) the Company's authorized, issued and outstanding membership interests, including the Units, as of the date hereof and as of the Closing Date and (ii) the number of Units owned by each Seller. All of the Units have been duly authorized and are validly issued, fully paid and nonassessable, and are not subject to, and were not issued in violation of, any preemptive rights or rights of first refusal. Except as set forth on Schedule 3.04, the Company does not have any other equity securities authorized, issued or outstanding, and there are no agreements, options, warrants or other rights or arrangements existing or outstanding which provide for the sale or issuance of any of the foregoing by the Company. Except as set forth on the attached Schedule 3.04, there are no outstanding (a) membership interests, capital stock or other equity interests or voting securities of the Company, (b) securities convertible or exchangeable into membership interests, capital stock or other equity interests or voting securities of the Company, (c) any options, warrants, purchase rights, subscription rights, preemptive rights, conversion rights, exchange rights, calls, puts, rights of first refusal or other contracts, agreements or obligations (contingent or otherwise) that could require the Company to issue, sell or otherwise cause to become outstanding or to acquire, repurchase, retire or redeem membership interests of the Company or (d) stock or unit appreciation, phantom stock or unit, profit participation or similar rights with respect to the Company. There are no bonds, debentures, notes or other Indebtedness of the Company outstanding having the right to vote (or convertible into, or exchangeable for, securities having the right to vote) on any matters on which any unitholder of the Company, in such unitholder's capacity as a unitholder of the Company, may vote.

3.05 Financial Statements.

(a) Schedule 3.05(a) consists of the Company's (i) audited consolidated balance sheets as of December 31, 2015 and December 31, 2014, and audited consolidated statements of income, cash flows and changes in members' equity for the fiscal years then ended, together with all related notes thereto, accompanied by the report thereon of BKD, LLP and (ii) unaudited consolidated balance sheet as of June 30, 2016 (the "Latest Balance Sheet"), and unaudited consolidated statements of income, cash flows and changes in members' equity for the six (6)-month period then ended (the financial statements in clauses (i) and (ii), collectively, the "Financial Statements"). Except as set forth on Schedule 3.05(a), the Financial Statements have been based upon the information contained in books and records of the Company and its Subsidiaries, have been prepared in accordance with GAAP, consistently applied throughout the periods indicated, and present fairly in all material respects the consolidated financial condition and results of operations of the Company and its Subsidiaries as of the dates and for the periods referred to therein, subject in the case of the unaudited financial statements to (i) the absence of footnote disclosures and other presentation items and (ii) changes resulting from normal year-end adjustments (none of which footnote disclosures or changes would, individually or in the aggregate, be material to the Business, operations, assets, liabilities, financial position or condition, operating results or cash flow of the Company and its Subsidiaries, taken as a whole).

(b) The Company and its Subsidiaries have no liabilities or obligations (whether matured or unmatured, known or unknown, fixed or contingent or otherwise), except (i) liabilities or obligations reflected on or reserved against on the Latest Balance Sheet, (ii) liabilities that were incurred after the date of the Latest Balance Sheet in the ordinary course of business consistent with past practice (none of which is a liability for breach of contract, breach of warranty, infringement, tort, or violation of Law), (iii) liabilities arising under the executory portion of any Contract and (iv) liabilities set forth on Schedule 3.05(b).

(c) Except as set forth on Schedule 3.05(c), none of the Company or any of its Subsidiaries generates revenue, has a presence or carries on any Business outside of the United States.

3.06 Absence of Certain Developments

. Since December 31, 2015, there has occurred no event, change, circumstance, occurrence, fact, condition, effect or development that has had a Company Material Adverse Effect. Except as set forth on the attached Schedule 3.06 and except as expressly contemplated by this Agreement, since December 31, 2015 the Company and its Subsidiaries have conducted their businesses in all material respects only in the ordinary course of business consistent with past practice, and neither the Company nor any of its Subsidiaries has:

(a) borrowed any amount or incurred or become subject to any Indebtedness or other material liabilities (other than liabilities incurred in the ordinary course of business consistent with past practice, liabilities under Contracts entered into in the ordinary course of business consistent with past practice or disclosed on the Disclosure Schedules necessary to meet ordinary course working capital requirements and intercompany advances);

(b) mortgaged, pledged or subjected to any material Lien, charge or other encumbrance, any material portion of its assets, except Permitted Liens;

(c) sold, assigned, transferred, leased or licensed or otherwise encumbered all or any material portion of its tangible assets, except in the ordinary course of business;

(d) (i) sold, assigned, transferred, leased, licensed, sublicensed or otherwise encumbered any Intellectual Property owned by the Company or its Subsidiaries or necessary for or used in the Business, except in the ordinary course of business, (ii) to the Company's knowledge, disclosed any proprietary confidential information or trade secrets to any Person that is not an Affiliate of the Company or any of its Subsidiaries, except pursuant to a valid and binding non-disclosure or confidentiality agreement or (iii) abandoned or permitted to lapse any Intellectual Property (including registrations and applications for registrations of Intellectual Property) necessary for or used in the Business;

(e) issued, sold or transferred any of its membership interests or other equity securities, securities convertible, exchangeable or exercisable into its membership interests or other equity securities or warrants, options or other rights to acquire its membership interests or other equity securities, or stock appreciation, phantom stock, profit participation or similar rights with respect to the Company, or any notes, bonds or debt securities;

(f) made any material capital investment in, or any material loan or advance to, or guaranty for the benefit of, any other Person (other than a Subsidiary of the Company);

(g) declared, set aside, or paid any dividend or made any non-cash distribution with respect to its membership interests or other equity securities or redeemed, purchased, or otherwise acquired any of its membership interests or other equity securities (including any warrants, options or other rights to acquire its membership interests or other equity securities), except for dividends or distributions made by the Company's Subsidiaries to their respective parents in the ordinary course of business;

(h) made any capital expenditures or commitments therefor in excess of $250,000, except for such capital expenditures or commitments therefor that are reflected in the Company's budget for the fiscal year ending December 31, 2016 previously provided to the Purchaser;

(i) made any material loan to, or entered into any other material transaction with, any of its directors, officers, and employees outside the ordinary course of business;

(j) (i) entered into any employment Contract with payments exceeding $150,000 per year or any collective bargaining agreement, or modified the terms of any such existing Contract or agreement or (ii) made or granted any bonus, retention, or severance payments or rights, or any wage, salary or other compensation increase to any employee or group of employees other than in the ordinary course of business consistent with past practice;

(k) made any other material change in employment terms (including compensation) for any of its directors or officers or for any employees having employment Contracts with annual payments exceeding $150,000 per year;

(l) discharged or satisfied any material Lien (other than any Permitted Lien) or paid any material obligation or material liability, other than current liabilities paid in the ordinary course of business consistent with past practice;

(m) except in the ordinary course of business, (i) made or granted any material increase in any benefits under an employee benefit plan, policy or arrangement, or (ii) materially amended or materially terminated any existing employee benefit plan, policy or arrangement or adopted any new material employee benefit plan, policy or arrangement;

(n) suffered any damage, destruction or casualty loss exceeding, in the aggregate, $250,000, whether or not covered by insurance;

(o) made any change in any accounting policies or principles;

(p) entered into any Material Contract or real property lease other than in the ordinary course of business;

(q) made or changed any Tax election, changed any annual accounting period, adopted or changed any accounting method, filed any amended Tax Return, entered into any "closing agreement" as described in Section 7121 of the Code with respect to Taxes, settled any Tax claim or assessment, surrendered any right to claim a refund of Taxes, consented to any extension or waiver of the limitation period applicable to any Tax claim or assessment; or

(r) entered into any Contract, written or oral, to take any of the foregoing actions described in clauses (a) through (q) above.

3.07 Title to Properties

.

(a) Except as set forth on Schedule 3.07(a), the Company and each of its Subsidiaries owns good title to, or holds pursuant to valid and enforceable leases or subleases, all of the tangible personal property and tangible assets shown to be owned or leased by it on the Latest Balance Sheet, free and clear of all Liens, except for Permitted Liens and assuming the Indebtedness has been paid in full, and such tangible personal property and tangible assets are all of the tangible assets used in or reasonably necessary for the conduct of their businesses as they are being conducted as of the date hereof.

(b) The real property demised by the leases described on Schedule 3.07(b) constitutes all of the real property leased, subleased, licensed or otherwise occupied by the Company and its Subsidiaries (the "Leased Real Property"). Except as set forth on Schedule 3.07(b), the Leased Real Property leases are in full force and effect, and either the Company or one of its Subsidiaries holds a legal, valid and existing leasehold interest under each such lease, free and clear of all liens and encumbrances, except for Permitted Liens, and, to the Company's knowledge, the Leased Real Property leases are valid and binding obligations of the other party or parties thereto, enforceable in accordance with their terms. The Company has delivered to the Purchaser complete and accurate copies of each of the leases described on Schedule 3.07(b), including all amendments, extensions, renewals, guaranties and other agreements with respect thereto. None of such leases have been modified, except to the extent that such modifications are disclosed by the copies delivered or made available to the Purchaser. Neither the Company nor any of its Subsidiaries is in default under any of such leases and no event has occurred or circumstance exists which, with the delivery of notice, the passage of time or both, would constitute such a breach or default, or permit the termination, modification or acceleration of rent under any Leased Real Property lease. Except as set forth on Schedule 3.07(b), the transactions that are subject to the terms of this Agreement do not require the consent of any other party to any Leased Real Property lease, will not result in a breach of or default under any such lease, or otherwise cause any such lease to cease to be legal, valid, binding, enforceable and in full force and effect on identical terms following the Closing. The Company's or Subsidiary's possession and quiet enjoyment of the Leased Real Property under the Leased Real Property leases has not been disturbed and there are no ongoing disputes with respect to any Leased Real Property lease. No security deposit or portion thereof deposited with respect to any such Leased Real Property lease has been applied in respect of a breach or default under any such Leased Real Property lease which has not been redeposited in full. Neither the Company nor any Subsidiary has subleased, licensed or otherwise granted any Person the right to use or occupy such property subject to such Leased Real Property lease or any portion thereof. Neither the Company nor any Subsidiary owes, or will owe in the future, any brokerage commissions or finder's fees with respect to such Leased Real Property lease.

(c) Neither the Company nor any of its Subsidiaries owns or has owned any Owned Real Property.

(d) The Real Property comprises all of the real property used or intended to be used in, or otherwise related to, the Business.

(e) To the Company's knowledge, the Improvements are in good condition and repair, ordinary wear and tear excluded, and sufficient for the operation of the Business. To the Company's knowledge, there are no structural deficiencies or latent defects affecting any of the Improvements and, to the Company's knowledge, there are no facts or conditions affecting any of the Improvements which would, individually or in the aggregate, interfere in any material respect with the use or occupancy of the Improvements or any portion thereof in the operation of the Business.

(f) There is no condemnation, expropriation or other proceeding in eminent domain pending or, to the Company's knowledge, threatened, affecting any Real Property or any portion thereof or interest therein.

(g) All certificates of occupancy, permits, licenses, franchises, approvals and authorizations (collectively, the "Real Property Permits") of all Governmental Authorities, board of fire underwriters, associations or any other entities having jurisdiction over the Real Property, which are required or appropriate to use or occupy the Real Property or operate the Business as currently conducted, have been issued and are in full force and effect. Schedule 3.07(g) lists all material Real Property Permits held by the Company or any Subsidiary with respect to each Real Property. The Company has delivered to Purchaser a true and complete copy of all Real Property Permits. The Company has not received any notice from any Governmental Authority or other entity having jurisdiction over the Real Property threatening a suspension, revocation, modification or cancellation of any Real Property Permit and, to the Company's knowledge, there is no basis for the issuance of any such notice or the taking of any such action. The Real Property Permits will continue to be valid and effective following the consummation of the transactions contemplated hereby without the consent or approval of the issuing Governmental Authority or entity, no disclosure, filing or other action by the Company is required in connection with the transactions contemplated hereby, and Purchaser shall not be required to assume any additional liabilities or obligations under the Real Property Permits as a result of such transactions.

(h) To the Company's knowledge, each parcel of Real Property has direct access to a public street adjoining the Real Property, and such access is not dependent on any land or other real property interest which is not included in the Real Property. To the Company's knowledge, none of the Improvements or any portion thereof is dependent for its access, use or operation on any land, building, improvement or other real property interest which is not included in the Real Property.

(i) To the Company's knowledge, all water, oil, gas, electrical, steam, compressed air, telecommunications, sewer, storm and waste water systems and other utility services or systems for the Real Property have been installed and are operational and sufficient for the operation of the Business as currently conducted thereon, and all hook-up fees or other similar fees or charges have been paid in full. To the Company's knowledge, each such utility service enters the Real Property from an adjoining public street or valid private easement in favor of the supplier of such utility service or appurtenant to such Real Property, and is not dependent for its access, use or operation on any land, building, improvement or other real property interest which is not included in the Real Property.

3.08 Tax Matters

. Except as set forth on Schedule 3.08:

(a) The Company and its Subsidiaries have timely filed all Tax Returns which are required to be filed by them. Each such Tax Return has been prepared in compliance with all applicable Laws, and all such Tax Returns are true, correct and complete in all material respects. All Taxes (whether or not shown as due and owing by the Company and the Subsidiaries on all such Tax Returns) that are due and payable have been timely paid. Each of the Company and its Subsidiaries has properly withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any shareholder, employee, creditor, independent contractor, or other third party.

(b) There are no pending audits, disputes, written claims or other information requests asserting any deficiency in Taxes or any proposed adjustment of any Taxes or Tax Returns with respect to the Company or any of its Subsidiaries.

(c) Neither the Company nor any of its Subsidiaries has waived any statute of limitations beyond the date hereof in respect of any Taxes or agreed to any extension of time beyond the date hereof with respect to a Tax assessment or deficiency.

(d) Neither the Company nor any of its Subsidiaries is the beneficiary of any extension of time within which to file any Tax Return.

(e) Neither the Company nor any of its Subsidiaries has participated in a "reportable transaction" within the meaning of Treas. Reg. § 1.6011-4.

(f) The Company has been at all times classified as a partnership and each of its Subsidiaries has been at all times classified as a disregarded entity within the meaning of Treasury Regulation Section 301.7701-2(a) and none has made an election to be treated as an association within the meaning of Treasury Regulation Section 301.7701-3.

(g) There are no Liens for Taxes (other than Taxes not yet due and payable) upon any of the assets of the Company or any Subsidiary.

(h) Neither the Company nor any Subsidiary is a party to any agreement, contract, arrangement or Benefit Plan that has resulted or could result, separately or in the aggregate, in the payment of any "excess parachute payment" within the meaning of Section 280G of the Code (or any corresponding provision of state, local or foreign Tax law) and any U.S. Department of Treasury or Internal Revenue Service guidance issued thereunder in connection with the transactions contemplated hereby (either alone or in combination with the occurrence of any other event).

(i) Neither the Company nor any of its Subsidiaries has any actual or potential obligation to reimburse or otherwise "gross-up" any Person for any Taxes as a result of Sections 280G or 4999 of the Code.

(j) Neither the Company nor any Subsidiary (A) has been a member of an Affiliated Group filing a combined, consolidated, or unitary Tax Return (other than a group the members of which are the Company and its Subsidiaries or any combination thereof) or (B) has any liability for the Taxes of any Person (other than the Company or any Subsidiary) under Treasury Regulation §1.1502-6 or any analogous or similar state, local or foreign law or regulation, or as a transferee or successor.

(k) Each agreement, contract, arrangement or Benefit Plan of the Company and its Subsidiaries that is a "nonqualified deferred compensation plan" subject to Section 409A of the Code to which the Company or any of its Subsidiaries is a party (collectively, a "Plan") complies with and has been maintained in accordance with the requirements of Section 409A of the Code and any U.S. Department of Treasury or Internal Revenue Service guidance issued thereunder and no amounts under any such Plan is or has been subject to any interest or additional Tax set forth under Section 409A(a)(1)(B) of the Code. Neither the Company nor any of its Subsidiaries has any actual or potential obligation to reimburse or otherwise "gross-up" any Person for any Taxes as a result of Section 409A of the Code.

(l) Since January 1, 2011, no Claim has ever been made by a taxing authority in a jurisdiction where the Company or any Subsidiary does not file Tax Returns that the Company or any such Subsidiary, respectively, is or may be subject to taxation by that jurisdiction.

(m) None of the Company or any of its Subsidiaries will be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) beginning after the Closing Date as a result of any (i) change in method of accounting for a taxable period ending on or prior to the Closing Date; (ii) "closing agreement" as described in Section 7121 of the Code (or any corresponding or similar provision of state, local or foreign income Tax law) executed on or prior to the Closing Date; (iii) installment sale or open transaction disposition made on or prior to the Closing Date; (iv) prepaid amount received on or prior to the Closing Date other than in the ordinary course of business, (v) election pursuant to Section 108(i) of the Code; (vi) deferred intercompany gain or any excess loss account described in Treasury Regulations under Code Section 1502 (or any corresponding or similar provision of state, local or foreign Law); or (vii) use of an improper method of accounting for a taxable period on or prior to the Closing Date.

(n) None of the Company or any of its Subsidiaries is a party to or bound by any Tax allocation or Tax sharing agreement (other than (i) any customary agreements with customers, vendors, lenders, lessors entered into in the ordinary course of business and the primary purpose of which is not related to Taxes and (ii) property Taxes payable with respect to properties leased), and none has any current or potential contractual obligation to indemnify any other Person with respect to Taxes.

The representations and warranties contained in Section 3.05, Section 3.06(q), this Section 3.08 and Section 3.13 are the only representations and warranties being made by the Company with respect to Taxes related to the Company or any of its Subsidiaries or this Agreement or its subject matter, and no other representation or warranty contained in any other section of this Agreement shall apply to any such Tax matters.

3.09 Contracts and Commitments.

(a) Except as set forth on Schedule 3.09(a), neither the Company nor any of its Subsidiaries is party to or bound by any written:

(i) (A) collective bargaining agreement or contract with any trade union or other labor organization or (B) Contract with any current or former employee, director or independent contractor providing for future severance, change in control, retention, stay-pay or similar payments;

(ii) written bonus, pension, profit sharing, stock option, employee stock purchase, retirement or other form of deferred compensation plan, other than as described in Section 3.13(a) or the Disclosure Schedules relating thereto;

(iii) (A) Contract for the employment of any officer, individual employee or other person on a full-time, part-time or other basis providing for fixed compensation in excess of or equal to $125,000 per annum (other than standard offer letters for at-will employment) or relating to loans to officers, directors or Affiliates pursuant to which it has any

material obligation or (B) Contract with any independent contractor or consultant providing for fixed compensation in excess of or equal to $125,000 per annum;

(iv) (A) agreement or indenture relating to the borrowing of money or to mortgaging, pledging or otherwise placing a Lien on any material portion of their assets, or (B) Contract under which it has advanced or loaned any other Person, that is not an Affiliate of the Company, amounts exceeding, in the aggregate, $100,000;

(v) guaranty of any obligation for Indebtedness or other material guaranty;

(vi) settlement, conciliation or similar agreement with any Governmental Entity or pursuant to which the Company or its Subsidiaries will be required, after the date of this Agreement, to satisfy any monetary or material non-monetary obligations;

(vii) lease or agreement under which it is lessee or lessor of, or holds or operates any material personal property owned by any other party, or permits any third party to hold or operate any material personal property owned or controlled by it, in each case for which the annual rental exceeds $150,000;

(viii) Leased Real Property lease;

(ix) agreements relating to any completed material business acquisition by the Company or any of its Subsidiaries within the last three (3) years or pursuant to which the Company or any of its Subsidiaries has remaining obligations or liabilities;

(x) Contract pursuant to which (A) the Company or any of its Subsidiaries are licensed or otherwise permitted by a third party to use any Intellectual Property owned by such third party (other than non-exclusive licenses to the Company or any of its Subsidiaries of commercially available, unmodified "off the shelf" software where the aggregate fee, royalty or other consideration (including maintenance fees) for any such software or group of related software licenses is no more than $25,000 annually, or (B) any third party is licensed or otherwise permitted to use any Intellectual Property owned or held exclusively by the Company or any of its Subsidiaries;

(xi) Contract which limits or prohibits the Company or any of its Subsidiaries from competing or freely engaging in business anywhere in the world;

(xii) (A) joint venture, partnership or similar agreement related to the creation or development of Intellectual Property by or for the Company or any of its Subsidiaries, or (B) Contract providing for the assignment, ownership, creation or development of any Intellectual Property;

(xiii) (A) Contract that limits the freedom or right of the Company or any of its Subsidiaries to use Intellectual Property owned by the Company or any of its Subsidiaries, (B) any settlement contract, consent-to-use or settlement agreement relating to Intellectual Property, or (C) any Contract granting any exclusive rights to any third party with respect to the Intellectual Property owned by the Company or any of its Subsidiaries;

(xiv) Contract which is not terminable by the Company or applicable Subsidiary upon less than sixty (60) days' notice without penalty or additional liability and involves payments in excess of $250,000 annually;

(xv) any other Contract which involves a consideration in excess of $150,000 annually; or

(xvi) any other Contract that is outside the ordinary course of business which involves a consideration in excess of $10,000 executed within the thirty (30) days prior to the date hereof.

(b) The Company has delivered or made available to the Purchaser true and correct copies of all written Material Contracts and an accurate description of all oral arrangements or Material Contracts that are required to be set forth on Schedule 3.09(a), together with all material amendments, waivers or other changes thereto.

(c) Except as set forth on Schedule 3.09(c), (i) each of the Company and its Subsidiaries has performed in all material respects all material obligations required to be performed by it and is not in material default under, in material breach of, nor in receipt of any written Claim of material default or material breach under, any Material Contract; (ii) no event has occurred which, with the passage of time or the giving of notice or both, would result in a material default or material breach by the Company or any of its Subsidiaries under any Material Contract; and (iii) as of the date hereof, to the knowledge of the Company there is no material breach or threatened material breach by (or non-ordinary course notice of non-renewal or termination from (other than any automatic non-renewals or terminations in accordance with such Material Contract's terms)) the other parties to any Material Contract. Except for those that have terminated or expired in accordance with their terms, all of the Contracts and plans set forth on Schedule 3.09(a) or required to be set forth on Schedule 3.09(a) (collectively, the "Material Contracts") are valid and in full force and effect and constitute legal, valid and binding obligations of the Company or such Subsidiary, and are enforceable against the Company or such Subsidiary in accordance with their respective terms, and, to the Company's knowledge, constitute legal, valid and binding obligations of the other party or parties thereto, enforceable against such party or parties in accordance with their

respective terms, except as enforceability may be limited by bankruptcy laws, other similar laws affecting creditors' rights and general principles of equity affecting the availability of specific performance and other equitable remedies.

3.10 Intellectual Property

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(a) All of the patents, registered trademarks, registered service marks, registered copyrights, Internet domain names, and applications for any of the foregoing owned or purported to be owned by the Company and its Subsidiaries are set forth on Schedule 3.10. The Company and its Subsidiaries exclusively own and possess all right, title and interest in and to the Intellectual Property required to be set forth on Schedule 3.10, and such Intellectual Property is valid, enforceable, unexpired and subsisting and free and clear of all Liens, except for Permitted Liens. There are no claims pending or, to the Company's knowledge, threatened in writing against the Company or any of its Subsidiaries in the past four (4) years with respect to infringement, misappropriation or violation of any third party Intellectual Property. Neither the Company nor any of its Subsidiaries, nor the operation of the Business, infringes, misappropriates or violates, or has infringed, misappropriated or violated, the Intellectual Property of any third party. Except as set forth on Schedule 3.10, to the Company's knowledge, no third party is currently infringing, misappropriating or violating any Intellectual Property owned by the Company or any of its Subsidiaries.

(b) The Company and its Subsidiaries own or possess sufficient rights pursuant to a valid and enforceable written license agreement to use all Intellectual Property necessary for or used in the Business as presently conducted and proposed to be conducted, and all such Intellectual Property shall continue to be owned or otherwise possessed by the Company and its Subsidiaries or available for use on substantially similar terms and conditions by the Company and its Subsidiaries upon the completion of the Closing. The Company and its Subsidiaries have taken commercially reasonable measures to maintain, enforce and protect its rights in the Intellectual Property owned by the Company and its Subsidiaries.

(c) The Company and its Subsidiaries have taken commercially reasonable steps, including reasonable security measures, to protect and maintain the secrecy and confidentiality of all Intellectual Property owned by the Company and its Subsidiaries, including any trade secrets. Except as set forth on Schedule 3.10(c), all current and former employees, independent contractors, and other Persons who have been involved in any material respect in the development of any Intellectual Property for the benefit of, or under the direction or supervision of, the Company or any of its Subsidiaries, have executed and delivered to the Company and its Subsidiaries a valid and enforceable agreement (i) providing for the nondisclosure by such Person of any Confidential Information of the Company and its Subsidiaries, and (ii) providing for the assignment (by way of a present grant of assignment) by such Person to the Company and its Subsidiaries of any Intellectual Property arising out of such Person's employment by, engagement by, or contract with the Company and its Subsidiaries. To the Company's knowledge, except as set forth on Schedule 3.10(c), no such current or former employees, independent contractors, or other Persons are in breach of any such agreements.

(d) The information technology systems used in the Business, including all computer hardware, software, firmware, process automation and telecommunications systems, operate and perform in accordance with their documentation and functional specifications, in all material respects, and have operated and performed adequately during the last two (2) years (other than temporary problems arising in the ordinary course of business that did not materially disrupt the operations of the Business and which have been remedied in all material respects). The Company and its Subsidiaries have implemented commercially reasonable data backup, data storage, system redundancy, and disaster avoidance and recovery procedures, as well as a commercially reasonable business continuity plan.

3.11 Litigation

. Except as set forth on Schedule 3.11, there are no Claims (and, during the three (3) year period preceding the date of this Agreement, there have not been any Claims) pending or, to the Company's knowledge, threatened against the Company or any of its Subsidiaries (including, in each case, any Claims with respect to the transactions contemplated hereby or in which it is sought to restrain or prohibit or to obtain damages or other relief in connection with the transactions contemplated hereby), or pending or threatened by the Company or any of its Subsidiaries against any Person, at law or in equity, or before or by any Governmental Authority or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, and neither the Company nor any of its Subsidiaries is subject to or in default under any outstanding judgment, Order or decree of any court or Governmental Authority.

3.12 Governmental Consent.

Except as set forth on the attached Schedule 3.12(a), no material Permit of, or declaration to or filing with, any Governmental Authority or regulatory authority is required in connection with any of the execution, delivery or performance of this Agreement by the Company or the consummation by the Company of any other transaction contemplated hereby. Schedule 3.12(b) contains a complete list of all Permits issued to the Company or any of its Subsidiaries that are currently used by the Company or any of its Subsidiaries in connection with the operation of the Business, except for truck or trailer registrations or license plate tags, temporary permits that individually nor in the aggregate are material to the Business and such other immaterial Permits that would be readily obtainable by any qualified applicant without any undue burden or material cost in the event of any lapse, termination,

cancellation or forfeiture thereof, and such Permits represent all Permits required for the operation of the Business. The Company and its Subsidiaries are in compliance in all material respects with all such Permits identified on Schedule 3.12(b), all of which are in full force and effect, and, to the Company's knowledge, there are no pending or threatened limitations, terminations, expirations or revocations of such Permits other than such limitations, terminations, expirations or revocations that would not be material to the Business. No consent from any Governmental Authority is necessary for the continued validity of all such Permits identified on Schedule 3.12(b) in connection with the consummation of the transactions contemplated hereby. During the three (3) years prior to the date hereof, no written notices have been received by the Company or any of its Subsidiaries alleging the failure to hold any material Permits.

3.13 Employee Benefit Plans.

(a) Schedule 3.13(a) contains a true and complete list of all "pension plans" (as defined under Section 3(2) of ERISA) and "welfare plans" (as defined under Section 3(1) of ERISA) and other bonus or incentive compensation, deferred compensation, severance, retention, or termination pay, retirement, profit-sharing, change in control, transaction-based payment, performance award, equity or equity-related award, health and welfare benefit plans, programs, policies, practices, agreements and arrangements and other material employee benefit plans, programs, policies, practices, agreements and arrangements, regardless of whether such plan is subject to ERISA, which the Company or any ERISA Affiliate maintains, participates in, contributes to, is required to contribute to, or with respect to which the Company or any ERISA Affiliate has or may have any current liability or obligation (collectively, the "Benefit Plans"), including on account of any ERISA Affiliate.

(b) Each of the Benefit Plans that is intended to be qualified under Section 401(a) of the Code is subject to a favorable determination letter from the Internal Revenue Service or is a prototype or other plan that is entitled to rely on an opinion or advisory letter issued by the Internal Revenue Service to the plan sponsor regarding qualification of the form of the prototype or other plan, and except as disclosed on Schedule 3.13(b), to the Company's knowledge, nothing has occurred that would reasonably be expected to adversely affect such qualified status. Except as disclosed on Schedule 3.13(b), each Benefit Plan has been funded, administered and maintained, in form and in operation, in all material respects in accordance with its terms and with all applicable Laws, including but not limited to the requirements of the Code and ERISA. No "prohibited transaction," within the meaning of Section 4975 of the Code or Sections 406 and 407 of ERISA, and not otherwise exempt under Section 408 of ERISA, has occurred with respect to any Benefit Plan that would reasonably be expected to result in any material liability. There are no current actions, suits, or Claims pending, or, to the Company's knowledge, threatened or reasonably anticipated (other than routine claims for benefits) with respect to any Benefit Plan. There are no audits, inquiries, or proceedings pending or, to the Company's knowledge, threatened by any Governmental Authority with respect to any Benefit Plan.

(c) With respect to each Benefit Plan, all required contributions have been made on a timely basis.

(d) The Company has made available to the Purchaser true and complete copies of, in each case to the extent applicable, (i) all documents embodying each Benefit Plan, including, without limitation, all plan documents and amendments thereto, related trust documents, and group insurance policies and Contracts, (ii) the most recent determination, opinion, notification, or advisory letter received from the Internal Revenue Service for each Benefit Plan, (iii) the most recent Form 5500 annual report for each Benefit Plan, (iv) the most recent summary plan description and all summary(ies) of material modifications thereto for each Benefit Plan, (v) the most recent plan years' compliance and discrimination tests for each Benefit Plan, and (vi) all material correspondence with a Governmental Authority with respect to each Benefit Plan dated within the past thirty-six (36) months.

(e) Neither the Company nor any of its ERISA Affiliates maintains, sponsors, contributes to or has any current or contingent liability with respect to, (i) any employee benefit plan that is subject to Title IV of ERISA or Section 412 of the Code or (ii) any "multiemployer plan" (as such term is defined under Section 3(37) of ERISA). Except as set forth on Schedule 3.13(e), no Benefit Plan provides, and neither the Company nor any ERISA Affiliate has any actual or potential obligation to provide, post-employment health, life or other welfare benefits, other than as required under Section 4980B of the Code or any similar applicable Law or for which the covered individual pays the full cost of coverage.

(f) Except as expressly provided otherwise under this Agreement or as set forth on Schedule 3.13(f), the execution of this Agreement and the consummation of the transactions contemplated hereby will not (either alone or in combination with the occurrence of any other event) constitute an event under any Benefit Plan that will result in any payment (whether severance pay or otherwise), acceleration, forgiveness of Indebtedness, vesting, distribution, increase in benefits, forfeiture or obligation to fund benefits thereunder.

3.14 Insurance

. Schedule 3.14 contains a true and complete list as of the date of this Agreement of all material insurance policies to which the Company or any of its Subsidiaries is a party or which provide coverage to or for the benefit of or with respect to the Company, its Subsidiaries or any director or employee of the Company or its Subsidiaries in his or her capacity as such (the "Insurance Policies"), indicating in each case the type of coverage, name of the insured, the insurer, the premium, the expiration date of the policy and the amount of coverage. The Company has made available to the Purchaser true and complete copies of all such Insurance Policies. All Insurance Policies maintained by the Company and each of its Subsidiaries are in full force and effect

and, to the knowledge of the Company, neither the Company nor any of its Subsidiaries is in material default with respect to its obligations under any such policies or fidelity bonds. The Company and the Company's Subsidiaries are current in all premiums due under the Insurance Policies and have otherwise complied in all material respects with all of their material obligations under each Insurance Policy. The Company or one of the Company's Subsidiaries, as applicable, has given timely notice to the insurer of all material Claims known to the Company that may be insured by any such Insurance Policy. To the Company's knowledge, no Insurance Policy provides for any retrospective premium adjustment or other experience-based liability on the part of the Company or any of its Subsidiaries.

3.15 Compliance with Laws

. The Company, each of its Subsidiaries and, to the Company's knowledge, the Leased Real Property are, and during the three (3) years prior to the date hereof have been, in compliance in all material respects with all applicable Laws and regulations of foreign, federal, state and local governments and all agencies thereof, except where the failure to comply would not be material to the Business or the operations of the Company. During the three (3) years prior to the date hereof, no request for information or audits (other than in the ordinary course of business) and no Claims have been received by, and to the Company's knowledge, no Claims have been filed against, the Company or any of its Subsidiaries alleging material noncompliance with any Laws.

3.16 Environmental Compliance and Conditions

. Except as set forth on Schedule 3.16:

(a) The Company and its Subsidiaries are in compliance, and have for the past three (3) years complied, in all material respects with all Environmental Laws, which compliance has included obtaining, maintaining, and complying with all Permits required for the occupation of the Leased Real Property and the operation of the Business.

(b) None of the Company or any of its Subsidiaries has received in the past three (3) years, or prior to such time if not fully settled and resolved, any notice, report, Order, directive, or other information regarding any actual or alleged material violations of, or material liabilities arising under, Environmental Laws.

(c) None of the Company or any of its Subsidiaries has manufactured, distributed, treated, stored, arranged for or permitted the disposal of, transported, handled, released, or exposed any Person to, any Hazardous Substance, or owned or operated any property or facility (including the Leased Real Property) which is or has been contaminated by any Hazardous Substance, in each case so as to give rise to any current or future material liabilities pursuant to Environmental Laws.

(d) None of the Company or any of its Subsidiaries has designed, manufactured, sold, marketed, installed, repaired or distributed products or other items containing any Hazardous Substance so as to give rise to any material liabilities under Environmental Laws.

(e) None of the Company or any of its Subsidiaries has assumed, undertaken, become subject to, or provided an indemnity with respect to any material liability of any other Person relating to Environmental Laws.

(f) The Company has made available to the Purchaser all environmental audits, assessments, and reports and all other environmental documents materially bearing on environmental, health or safety liabilities or relating to the current and former operations and facilities (including without limitation the Leased Real Property) of the Company and its Subsidiaries that are in its possession or under its reasonable control.

3.17 Affiliated Transactions

. Except as set forth on Schedule 3.17, no officer, director, shareholder or Affiliate of the Company or any of its Subsidiaries or, to the Company's knowledge, any individual in any officer's or director's immediate family or any legal entity in which any such Person has the power to direct or control the actions of such legal entity, is a party to any Contract with the Company or any of its Subsidiaries or has any material interest in any assets, rights or property owned, licensed, leased or used by the Company or any of its Subsidiaries, other than employment-related Contracts. Schedule 3.17 contains a description of all material intercompany services provided to or on behalf of the Company or any of its Subsidiaries by any Seller or any Affiliates of the Sellers (other than the Company and its Subsidiaries).

3.18 Employees.

(a) Except as set forth on Schedule 3.18(a), (i) neither the Company nor any of its Subsidiaries has experienced any material grievances, claims of unfair labor practices, arbitrations, or other material collective bargaining disputes within the past three (3) years, nor are any threatened overtly or currently anticipated, (ii) within the past three (3) years, neither the Company nor any of its Subsidiaries has committed any unfair labor practice, (iii) no employees of the Company or any of its Subsidiaries are represented by any union, labor organization, or works council in connection with such employment, (iv) to the Company's knowledge, no union organizing activities are underway or threatened with respect to any of the employees of the Company or any of its Subsidiaries and no such activities have occurred within the past four (4) years, (v) neither the Company nor any of its Subsidiaries is aware of any union, works council or other labor organization demand for recognition, (vi) there are no

representation proceedings or petitions seeking a representation proceeding presently pending or, to the Company's knowledge, threatened to be brought or filed with the National Labor Relations Board or other labor relations tribunal, (vii) no collective bargaining agreements or other types of agreements with any union, labor organization, or works council with respect to any of the employees of the Company or any of its Subsidiaries are in effect or are currently being negotiated by the Company or any of its Subsidiaries, (viii) neither the Company nor any of its Subsidiaries has experienced any strike, work stoppage, picketing, walking out, lockout, slowdown or other material labor dispute during the last four (4) years, nor are any currently pending or, to the Company's knowledge, threatened.

(b) Except as set forth on Schedule 3.18(b), the Company and each of its Subsidiaries is, and within the past three (3) years has been, in compliance in all material respects with all Laws relating to labor relations or employment matters, including but not limited to Laws relating to employment practices, terms and conditions of employment, tax withholding, equal employment opportunity, discrimination, harassment, and retaliation, immigration status, employee safety and health, wages and hours, disability rights or benefits, applicant and employment background checking, the Worker Adjustment and Retraining Notification Act of 1988 and any similar state or local "mass layoff" or "plant closing" Law (collectively, "WARN"), collective bargaining, workers' compensation, equal pay, family and medical leave and other leaves of absences, and worker classification (including proper classification of employees as exempt or non-exempt under the Fair Labor Standards Act or similar state or local wage and hour laws, and proper classification of workers as employees or independent contractors). Except as set forth on Schedule 3.18(b), there are no Claims pending or, to the Company's knowledge, threatened against the Company or any of its Subsidiaries alleging a violation of any Law pertaining to labor relations or employment matters, including any charges or complaints filed with the Equal Employment Opportunity Commission or comparable Governmental Authority, nor have there been any material such Claims within the past three (3) years.

(c) To the Company's knowledge, no officer, executive or key employee of Company or any Subsidiary: (i) has any present intention to terminate his or her employment with such Company or Subsidiary within the first twelve (12) months immediately following the Closing Date; or (ii) is party to or bound by any non-competition, non-solicitation, confidentiality, non-disclosure, no-hire, or similar agreement that could materially restrict such person in the performance of his or her duties for the Company or any Subsidiary or the ability of any Company or any Subsidiary to conduct its business.

(d) Neither the Company nor any of its Subsidiaries has implemented any employee layoffs implicating WARN, or any early retirement or exit incentive program, in each case affecting any group of employees of the Company or any of its Subsidiaries, within the thirty-six (36) months prior to the Closing, nor has the Company or any of its Subsidiaries announced any such action or program for the future. Schedule 3.18(d) sets forth a true and complete list of employee layoffs, by date and location, implemented by the Company and its Subsidiaries in the ninety (90) day period preceding the Closing.

3.19 Customers. Schedule 3.19 hereto sets forth a true and complete list of the ten (10) largest customers (measured by dollar volume of sales by the Company and its Subsidiaries to such customers) of the Company and its Subsidiaries for the twelve (12)-month period ending May 31, 2016 (the "Significant Customers"). Since December 31, 2015, except as set forth on Schedule 3.19, no Significant Customer has notified the Company or any Subsidiary of the Company that it is cancelling or intends to cancel its relationship with the Company or any of its Subsidiaries, no Contract with a Significant Customer has been materially modified in a manner adverse to the interests of the Company relative to the terms in the previously existing Contract and no Significant Customer has provided any Seller or the Company or any of its Subsidiaries written notice that it will discontinue doing business with the Company or its Subsidiaries or materially reduce the business that it currently conducts with the Company and its Subsidiaries.

3.20 Brokerage

. Except for the fees and expenses of Simmons & Company International, a division of Piper Jaffray & Co., there are no claims for brokerage commissions, finders' fees or similar compensation due in connection with the transactions contemplated by this Agreement based on any arrangement or agreement made by or on behalf of the Company or any of its Subsidiaries.

3.21 No Other Representations and Warranties. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES REGARDING THE COMPANY CONTAINED IN THIS ARTICLE III (INCLUDING THE DISCLOSURE SCHEDULES) OR ANY OTHER AGREEMENT OR CERTIFICATE EXECUTED IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY, THE COMPANY DOES NOT MAKE ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY, AND THE COMPANY HEREBY DISCLAIMS ANY SUCH REPRESENTATION OR WARRANTY WITH RESPECT TO THE EXECUTION AND DELIVERY OF THIS AGREEMENT AND THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

ARTICLE IIIA

REPRESENTATIONS AND WARRANTIES OF THE SELLERS

Each Seller hereby represents and warrants to the Purchaser and Parent as of the date hereof and as of the Closing that:

3A.01 Organization and Power.

If such Seller is a corporation, limited liability company, partnership or other entity, such Seller is duly organized, validly existing and in good standing under the laws of the state of its incorporation, organization or formation, and such Seller has all requisite limited liability company power and authority to own and operate its properties and assets and to carry on its businesses as now conducted, except where the failure to have such power and authority has not had and would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the ability of such Seller to perform this Agreement or consummate the transactions contemplated hereby.

3A.02 Authorization; No Breach; Valid and Binding Agreement.

If such Seller is a corporation, limited liability company, partnership or other entity, the execution, delivery and performance of this Agreement and all of the other agreements and instruments contemplated hereby to which such Seller is a party and the consummation of the transactions contemplated hereby or thereby have been duly and validly authorized by all requisite action, and no other act or proceeding (corporate or otherwise) on the part of such Seller is necessary to authorize the execution, delivery or performance of this Agreement, the other agreements contemplated hereby or the consummation of the transactions contemplated hereby or thereby. Such Seller has all requisite power and authority and full legal capacity to execute and deliver this Agreement and to perform its, his or her obligations hereunder. Such Seller's execution, delivery and performance of this Agreement and each of the other agreements and instruments contemplated hereby to which such Seller is a party, and the consummation of the transactions contemplated hereby or thereby, will not breach or violate (a) if such Seller is a corporation, limited liability company, partnership or other entity, such Seller's organizational documents, (b) any applicable Law, or rule or regulation, or order, writ, injunction or decree, of any Governmental Authority applicable to such Seller, or (c) any Contract or Permit to which such Seller is bound, except in the cases of clauses (b) and (c), where such breach or violation would not materially and adversely affect such Seller's ability to execute, deliver and perform this Agreement or consummate the transactions contemplated hereby. This Agreement and each of the other agreements and instruments contemplated hereby to which such Seller is a party and that is required by the terms of this Agreement to be executed on or before the date hereof, has been duly executed and delivered by such Seller and, assuming that this Agreement and each of these other agreements and instruments has been duly executed, authorized and delivered by the Purchaser, the Company and Parent, this Agreement and each of these other agreements and instruments constitutes a valid and binding obligation of such Seller, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy laws, other similar laws affecting creditors' rights and general principles of equity affecting the availability of specific performance and other equitable remedies.

3A.03 Capitalization.

Such Seller is the record owner of the number of Units set forth opposite such Seller's name on Schedule 3A.03 and owns such Units free and clear of all Liens other than restrictions on transfer imposed by state and federal securities laws or the limited liability company agreement of the Company, and Seller does not own any Units or any other membership interests or other equity interests or voting securities of the Company, except as set forth on Schedule 3A.03. Seller has good title to, and has full power and authority to convey, all of the Units. Upon transfer to the Purchaser of the certificates representing such Units and payment for the Units at the Closing in accordance with the terms hereof, the Purchaser will receive good title to such Units, free and clear of all Liens (other than Permitted Liens).

3A.04 Litigation.

There are no Claims pending or, to such Seller's knowledge, threatened against such Seller at law or in equity, or before or by any Governmental Authority, which would materially and adversely affect such Seller's ability to perform this Agreement or consummate the transactions contemplated hereby. Such Seller is not subject to any outstanding judgment, Order or decree of any court or Governmental Authority that would materially and adversely affect the Seller's ability to perform this Agreement or consummate the transactions contemplated hereby.

3A.05 Governmental Consents, etc.

Except as set forth on Schedule 3A.05, no consent, approval or authorization of any Governmental Authority or regulatory authority is required to be obtained by such Seller in connection with such Seller's execution, delivery and performance of this Agreement or its consummation of the transactions contemplated hereby.

3A.06 Brokerage.

Except for the fees and expenses of Simmons & Company International, a division of Piper Jaffray & Co., there are no claims for brokerage commissions, finders' fees or similar compensation due in connection with the transactions contemplated by this Agreement based on any arrangement or agreement made by or on behalf of such Seller.

3A.07 Investment Representations

.

(a) Such Seller is acquiring the Parent Shares solely for such Seller's account, for investment purposes only and not with a view to, or for sale or other disposition in connection with, any distribution of the Parent Shares within the meaning of the Securities Act of 1933, as amended, or any applicable state or foreign securities laws. The Seller acknowledges that the Parent Shares have not been registered under the Securities Act of 1933, as amended, or any state or foreign securities laws and that the Parent Shares may not be sold, transferred, offered for sale, pledged, hypothecated or otherwise disposed of unless such sale, transfer, offer, pledge, hypothecation or other disposition is effected (i) pursuant to the terms of an effective registration statement under the Securities Act of 1933, as amended (and the Parent Shares are registered under any applicable state or foreign securities laws), or (ii) pursuant to an exemption from registration under the Securities Act of 1933, as amended, and any applicable state or foreign securities laws.

(b) Such Seller is not a party to any agreement or other arrangement for the disposition of any Parent Shares other than this Agreement.

(c) Such Seller (i) is an Accredited Investor, (ii) is able to bear the economic risk of an investment in the Parent Shares and can afford to sustain a total loss of that investment, (iii) has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of an investment in the Parent Shares, (iv) has had an adequate opportunity to ask questions of and receive answers from the officers of Parent concerning Parent and its Subsidiaries and the Parent Shares, and (v) as of the date hereof, has received and reviewed copies of Parent's most recent annual report on Form 10-K, most recent proxy statement and all other reports filed by Parent under Section 13(a) of the Securities Exchange Act of 1934, as amended, since the date of filing of Parent's most recent annual report on Form 10-K prior to the date hereof.

3A.08 No Reliance.

Such Seller represents, warrants and agrees that such Seller has not relied upon any information, or the omission of any information, provided or made available by the Parent or Purchaser, any of Parent's other Subsidiaries, or any of their respective Representatives, other than the representations and warranties set forth in Article IV (including without limitation, any estimates, projections, forecasts or other materials made available to such Seller or such Seller's Affiliates in certain "data rooms," management presentations or the like) and the information contained in the Parent's most recent annual report on Form 10-K, most recent proxy statement and all other reports filed by Parent under Section 13(a) of the Securities Exchange Act of 1934, as amended, since the date of filing of Parent's most recent annual report on Form 10-K prior to the date hereto. Such Seller acknowledges that it is taking full responsibility for making its own evaluation of the adequacy and accuracy of all estimates, projections and other forecasts, including, without limitation, the reasonableness of the assumptions underlying such estimates, projections and forecasts.

3A.09 No Other Representations and Warranties.

EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS ARTICLE IIIA (INCLUDING THE DISCLOSURE SCHEDULES) OR ANY OTHER AGREEMENT OR CERTIFICATE EXECUTED IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY, SUCH SELLER DOES NOT MAKE ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY, AND SUCH SELLER HEREBY DISCLAIMS ANY SUCH REPRESENTATION OR WARRANTY WITH RESPECT TO THE EXECUTION AND DELIVERY OF THIS AGREEMENT AND THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE PURCHASER AND PARENT

Each of the Purchaser and Parent, as applicable, represents and warrants to the Company and the Sellers as of the date hereof and as of the Closing that:

4.01 Organization and Corporate Power.

Each of the Purchaser and Parent is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, has all requisite limited liability company power and authority and all authorizations, licenses and permits necessary to own and operate its properties and assets, to carry on its businesses as now conducted and to execute and deliver this Agreement and carry out the transactions contemplated hereby, and each is qualified or licensed to do business in every jurisdiction in which its ownership of property or conduct of business requires it to qualify or be licensed, except where the failure to hold such power, authority, authorizations, licenses and permits would not reasonably be expected to be, individually or in the aggregate, material to the business of Purchaser and Parent, as applicable. The copies of the certificate of formation or organization and bylaws, including all amendments thereto prior to the date hereof, of each of the Purchaser and Parent have been made available to the Company and Sellers and are true and complete. Each of the Purchaser and Parent is not in default under, or in violation of, any provision of its organizational documents.

4.02 Authorization

. The execution, delivery and performance of this Agreement and all of the other agreements and instruments contemplated hereby to which the Purchaser or Parent is a party, and the consummation of the transactions contemplated hereby or thereby, have been duly and validly authorized by all requisite corporate action, and no other act or proceeding (corporate or otherwise) on the Purchaser's or Parent's, as applicable, part are necessary to authorize the execution, delivery or performance of this Agreement, the other agreements contemplated hereby or the consummation of the transactions contemplated hereby or thereby. Each of the Purchaser and Parent has all requisite corporate power and authority and full legal capacity to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement and each of the other agreements and instruments contemplated hereby to which the Purchaser or Parent is a party has been duly executed and delivered by the Purchaser or Parent, as applicable, and assuming that this Agreement and each of the other agreements and instruments contemplated hereby to which the Purchaser is a party has been duly executed and delivered by the Sellers and the Company, this Agreement and each of the other agreements and instruments contemplated hereby to which the Purchaser or Parent is a party constitutes a valid and binding obligation of the Purchaser or Parent, as applicable, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy laws, other similar laws affecting creditors' rights and general principles of equity effecting the availability of specific performance and other equitable remedies.

4.03 No Violation

. Each of the Purchaser's and Parent's execution, delivery and performance of this Agreement and each of the other agreements and instruments contemplated hereby to which the Purchaser or Parent is a party, and the consummation of the transactions contemplated hereby or thereby, do not and will not conflict with or result in any breach of, constitute a default under, or result in a violation of (a) the Purchaser's or Parent's certificate of incorporation or its bylaws (or similar organizational documents), (b) any applicable Law, or rule or regulation, or order, writ, injunction or decree, of any Governmental Authority applicable to Purchaser or Parent, or (c) any Contract or Permit binding upon the Purchaser or Parent, except in the cases of clauses (b) and (c), where such breach or violation would not materially and adversely affect the Purchaser's or Parent's ability to execute, deliver and perform this Agreement or consummate the transactions contemplated hereby.

4.04 Governmental Authorities; Consents

. Except as set forth on Schedule 4.04, no consent, approval or authorization of any Governmental Authority or regulatory authority is required to be obtained by the Purchaser or Parent in connection with its execution, delivery and performance of this Agreement or the consummation of the transactions contemplated hereby.

4.05 Litigation

. There are no Claims pending or, to the Purchaser's or Parent's knowledge, threatened against the Purchaser or Parent at law or in equity, or before or by any Governmental Authority, which would materially and adversely affect the Purchaser's or Parent's ability to perform this Agreement or consummate the transactions contemplated hereby. Neither the Purchaser nor Parent is subject to any outstanding judgment, Order or decree of any court or Governmental Authority that would materially and adversely affect the Purchaser's or Parent's ability to perform this Agreement or consummate the transactions contemplated hereby.

4.06 Brokerage

. Except as set forth on Schedule 4.06, there are no claims for brokerage commissions, finders' fees or similar compensation in connection with the transactions contemplated by this Agreement based on any arrangement or agreement made by or on behalf of the Purchaser or Parent.

4.07 Investment Representation

. The Purchaser is acquiring the Units for its own account with the present intention of holding such securities for investment purposes and not with a view to, or for sale in connection with, any distribution of such securities in violation of any federal or state securities laws. The Purchaser is an Accredited Investor. The Purchaser acknowledges that it is informed as to the risks of the transactions contemplated hereby and of ownership of the Units. The Purchaser acknowledges that the Units have not been registered under the Securities Act of 1933, as amended, or any state or foreign securities laws and that the Units may not be sold, transferred, offered for sale, pledged, hypothecated or otherwise disposed of unless such transfer, sale, assignment, pledge, hypothecation or other disposition is pursuant to the terms of an effective registration statement under the Securities Act of 1933, as amended, and the Units are registered under any applicable state or foreign securities laws or sold pursuant to an exemption from registration under the Securities Act of 1933, as amended, and any applicable state or foreign securities laws.

4.08 Financing

. The Purchaser will have on the Closing Date sufficient available funds to pay the Estimated Cash Purchase Price, and to pay all fees, costs, expenses and other amounts required to be paid by the Purchaser pursuant to this Agreement.

4.09 Solvency

. The Purchaser and Parent are not entering into this Agreement or the transactions contemplated hereby with the intent to hinder, delay or defraud either present or future creditors of the Purchaser, the Company or any of their respective Subsidiaries. Assuming that the Company and its Subsidiaries are solvent on the date hereof and on the Closing Date and that the representations and warranties of the Company and the Sellers contained in this Agreement are true and correct, and after giving effect to the transactions contemplated by this Agreement, at and immediately after the Closing Date, Purchaser and its Subsidiaries (taken as a whole) will be solvent. As used in this Section 4.09, the term "solvent" means, with respect to a Person as of a particular date, that on such date (a) the sum of the fair saleable value of assets of such Person is greater than the sum of its debts (including a reasonable estimate of the amount of all contingent liabilities), (b) such Person shall be able to pay its debts as they mature or become due; and (c) such Person and each of its Subsidiaries shall have adequate capital and liquidity to carry on their respective businesses.

4.10 Investigation

. Each of the Purchaser and Parent acknowledges that it is relying on its own independent investigation and analysis in entering into the transactions contemplated hereby. Each of the Purchaser and Parent is knowledgeable about the industries in which the Company and its Subsidiaries operate and is capable of evaluating the merits and risks of the transactions contemplated by this Agreement and is able to bear the substantial economic risk of such investment for an indefinite period of time. Each of the Purchaser and Parent has been afforded access to books and records, facilities and personnel of the Company and its Subsidiaries for purposes of conducting a due diligence investigation and has conducted a due diligence investigation of the Company and its Subsidiaries to its satisfaction.

4.11 Capital Stock

. The authorized shares of capital stock of the Parent consist of (i) 500,000,000 shares of Parent Common Stock and (ii) 10,000,000 shares of Parent Preferred Stock. As of June 30, 2016, 64,007,899 shares of Parent Common Stock are issued and outstanding and no shares of Parent Preferred Stock are issued and outstanding. As of the date hereof, all of the issued and outstanding shares of Parent Common Stock are duly authorized, validly issued, fully paid and non-assessable. At the Closing, Parent will have sufficient authorized but unissued shares or treasury shares of Parent Common Stock for Parent to meet its obligation to deliver the Parent Shares under this Agreement.

4.12 Parent Shares. Upon issuance, the Parent Shares will be duly authorized, validly issued, fully paid and non-assessable and will not be subject to any option, call, preemptive, subscription or similar rights or Liens, other than Permitted Liens and restrictions on transfer imposed by state and federal securities laws. Subject to the accuracy of the representations set forth in Section 3A.07, the Parent Shares will be issued to Sellers in compliance with applicable exemptions from (A) the registration and prospectus delivery requirements of the Securities Act of 1933, as amended, and (B) the registration and qualification requirements of all applicable securities laws of the states of the United States.

4.13 No Purchaser Material Adverse Effect. Since December 31, 2015, there has occurred no event, change, circumstance, occurrence, fact, condition, effect or development that has had, or would reasonably be expected to have, a Purchaser Material Adverse Effect.

4.14 No Shareholder Approval. The issuance and delivery by Parent of the Parent Shares to the Sellers does not require any vote or other approval or authorization of any holder of any capital stock of Parent.

4.15 No Reliance. Each of the Purchaser and Parent represents, warrants and agrees that the Purchaser has not relied upon any information, or the omission of any information, provided or made available by the Sellers, the Company, any Subsidiary of the Company, or any of their respective Representatives, other than the representations and warranties set forth in Article III and Article IIIA (including without limitation, any estimates, projections, forecasts or other materials made available to the Purchaser, Parent or their Affiliates in certain "data rooms," management presentations or the like). Each of the Purchaser and Parent acknowledges that it is taking full responsibility for making its own evaluation of the adequacy and accuracy of all estimates, projections and other forecasts, including, without limitation, the reasonableness of the assumptions underlying such estimates, projections and forecasts.

4.16 No Other Representations and Warranties.

EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF THE PURCHASER AND PARENT CONTAINED IN THIS ARTICLE IV (INCLUDING ANY DOCUMENTS REFERENCED THEREIN) OR ANY OTHER AGREEMENT OR CERTIFICATE EXECUTED IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY, THE PURCHASER AND PARENT DO NOT MAKE ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY, AND THE PURCHASER AND PARENT HEREBY DISCLAIM ANY SUCH REPRESENTATION OR WARRANTY WITH RESPECT TO THE EXECUTION AND DELIVERY OF THIS AGREEMENT AND THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

ARTICLE V

COVENANTS OF THE COMPANY AND THE SELLERS

5.01 Conduct of the Business.

From the date hereof until the earlier of the Closing and the termination of this Agreement in accordance with Section 7.01, except (i) as expressly contemplated hereunder, (ii) as required by Law, (iii) if the Purchaser shall have consented in advance in writing or (iv) as set forth on Schedule 5.01, the Company shall (and shall cause each of its Subsidiaries to) conduct the Business in the ordinary course of business consistent with past practice and use commercially reasonable efforts to preserve the goodwill and organization of its business and the relationships with customers, suppliers, vendors, officers, employees, consultants and other Persons having business relations with the Company and its Subsidiaries, and the Company shall not, and shall cause each of its Subsidiaries not to:

(a) issue, sell or deliver any membership interests or issue or sell any securities convertible, exercisable or exchangeable into, or options with respect to, or warrants to purchase or rights to subscribe for, any membership interests, or stock appreciation, phantom stock, profit participation or similar rights, or any notes, bond or debt securities;

(b) effect any recapitalization, reclassification, unit dividend, unit split or similar change in capitalization;

(c) amend its certificate or articles of incorporation or bylaws (or equivalent organizational documents);

(d) make any redemption or purchase of any membership interests, including the Units;

(e) sell, assign, transfer, mortgage, pledge, lease, license, sublicense or subject to any Lien, charge or otherwise encumber all or any portion of its assets, except Permitted Liens;

(f) make any capital investment in, or any capital contribution or loan or advance to, or guaranty for the benefit of, any other Person;

(g) make any capital expenditures or commitments therefor in excess of $250,000, except for such capital expenditures or commitments therefor that are reflected in the Company's capital expenditure budget for the fiscal year ending December 31, 2016 previously provided to the Purchaser, or unreasonably delay any capital expenditures contemplated by such budget;

(h) make any loan to, or enter into any other transaction with, any directors, officers or employees, other than immaterial loans or transactions made or entered into in the outside the ordinary course of business consistent with past practice;

(i) incur any Indebtedness (other than to the extent the amount incurred is set forth on the Indebtedness Payoff Schedule);

(j) make or grant any bonus or any wage or salary increase to any director, officer, employee or group of employees, or make or grant any increase in any employee benefit plan or arrangement, or amend or terminate any existing employee benefit plan or arrangement or adopt any new employee benefit plan or arrangement or enter into, amend or terminate any collective bargaining agreement or other employment agreement;

(k) implement any employee layoffs implicating WARN;

(l) compromise or settle any material Claim;

(m) undertake or fail to undertake any action that, with the delivery of notice, the passage of time or both, would result in a breach or default under any Leased Real Property lease;

(n) terminate or materially modify or amend any Material Contract, or enter into any agreement that, if existing prior to the date of this Agreement, would be a Material Contract;

(o) hire any officers or key employees or terminate the services of any existing officers or existing key employees, other than for cause;

(p) take or omit to take any action that would have required to be disclosed under Sections 3.06(d), 3.06(g), 3.06(j), 3.06(k), 3.06(l), 3.06(o), 3.06(p) or 3.06(q) if such action had been taken between December 31, 2015 and the date of this Agreement.

Without limiting the scope of covenants of Sellers and the Company set forth in this Section 5.01, the parties acknowledge and agree that (y) nothing contained in this Section 5.01 is intended to give the Purchaser or Parent, directly or indirectly, the right to direct the control or operations of the Company or any of its Subsidiaries prior to the Closing and (z) prior to the Closing, subject to this Section 5.01, the Company shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over the operations of it and its Subsidiaries.

5.02 Access to Books and Records

.

(a) From the date hereof until the earlier of the Closing and the termination of this Agreement in accordance with Section 7.01, the Company shall (and shall cause each of its Subsidiaries to) provide the Purchaser and its Representatives with full access during normal business hours and upon reasonable notice to the offices, properties, books and records of the Company and its Subsidiaries; provided that (a) such access shall not materially and unreasonably interfere with the conduct of the business of the Company and its Subsidiaries, taken as a whole, and (b) nothing herein shall require the Company and its Subsidiaries to provide access to, or to disclose any information to, the Purchaser if such access or disclosure would be reasonably likely to (i) waive any legal privilege or (ii) be in violation of applicable Law or the provisions of any Contract entered into prior to the date of this Agreement and to which the Company or any Subsidiary is a party. In the event that the Company or its Subsidiaries does not provide access to or disclose information in reliance on clause (i) or (ii) of the preceding sentence, the Company shall provide written notice to the Purchaser that it is denying such access or withholding such information and shall use its commercially reasonable efforts to communicate, to the extent feasible, the applicable information in a way that would not waive such privilege or contravene such Law or Contract. The Purchaser acknowledges that it remains bound by the Confidentiality Agreement, dated March 3, 2016 (the "Confidentiality Agreement") and that all information it obtains as a result of access under this Section 5.02 shall be subject to the Confidentiality Agreement.

(b) The Company shall deliver to the Purchaser copies of the Company's unaudited interim monthly consolidated financial statements as soon as reasonably practicable (and in any event within thirty (30) days) following the end of each full monthly accounting period following the date hereof during the period between the date of this Agreement and the Closing or termination of this Agreement as prepared by the Company in the ordinary course of business.

5.03 Restrictive Covenants

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(a) Each Restricted Seller hereby acknowledges that such Restricted Seller is familiar with the Company's and its Subsidiaries' trade secrets and with other Confidential Information. Each Restricted Seller acknowledges and agrees that the Company would be irreparably damaged if such Restricted Seller were to violate the restrictions set forth in this Section 5.03. Each Restricted Seller further acknowledges and agrees that the covenants and agreements set forth in this Section 5.03 were a material inducement to the Purchaser to enter into this Agreement and to perform its obligations hereunder, and that the Purchaser and its stockholders (including Parent) would not obtain the benefit of the bargain set forth in this Agreement as specifically negotiated by the parties hereto if such Restricted Seller breached the provisions of this Section 5.03. Therefore, each Restricted Seller agrees, in further consideration of the amounts to be paid hereunder for the Units and the goodwill of the Company sold by the Restricted Sellers, that until the fourth (4^{th}) anniversary of the Closing, each Restricted Seller shall not (and shall cause its, his or her Affiliates not to) directly or indirectly own any interest in, manage, control, participate in (whether as an officer, director, employee, partner, agent, representative or otherwise), consult with, render services for, or in any other manner engage anywhere in the Restricted Territories (as defined below) in any business engaged directly or indirectly in the Business; provided, that nothing herein shall prohibit such Restricted Seller or any of such Restricted Seller's Affiliates from being a passive owner of not more than 2% of the outstanding stock of any class of a corporation which is publicly traded so long as none of such Persons has any active participation in the business of such corporation. Each Restricted Seller acknowledges that the business of the Company and its Subsidiaries has been conducted or is presently proposed to be conducted throughout the United States (the "Restricted Territories") and that the geographic restrictions set forth above are reasonable and necessary to protect the goodwill of the Company's business being sold by the Restricted Sellers pursuant to this Agreement.

(b) Each Restricted Seller agrees that until the fourth (4^{th}) anniversary of the Closing such Restricted Seller shall not (and shall cause its, his or her Affiliates not to) directly, or indirectly through another Person, (i) induce or attempt to induce any employee of the Company or its Subsidiaries to leave the employ of the Company or its Subsidiaries, or in any way interfere with the relationship between the Company or its Subsidiaries and any employee thereof, (ii) hire any person who was an employee of the Company or its Subsidiaries at any time during the one (1)-year period immediately prior to the date on which such hiring would take place (it being conclusively presumed by the parties so as to avoid any disputes under this Section 5.03(b) that any such hiring within such one (1)-year period is in violation of clause (i) above), or (iii) call on, solicit or service any customer, strategic partner, supplier, vendor, licensee, licensor or other business relation of the Company or its Subsidiaries (including any Person that was a customer, strategic partner, supplier, vendor or other potential business relation of the Company or its Subsidiaries at any time during the one (1)-year period immediately prior to such call, solicit or service), induce or attempt to induce such Person to cease doing business with the Company or its Subsidiaries, or in any way interfere with the relationship between any such customer, strategic partner, supplier, vendor, licensee or business relation and the Company or its Subsidiaries (including making any negative statements or communications about the Company or its Subsidiaries) in a manner harmful to the Company or its Subsidiaries.

(c) For a period of two (2) years following the Closing, each Seller agrees that it shall not (and shall cause its, his or her Affiliates not to) (i) make any negative statement or communication regarding Purchaser, Parent, the Company or any

of their respective Subsidiaries, Affiliates, directors, officers or employees or (ii) make any derogatory or disparaging statement or communication regarding Purchaser, Parent the Company or any of their respective Subsidiaries, Affiliates, directors, officers or employees.

(d) Each Seller agrees that such Seller shall not (and shall cause its, his or her Affiliates and Representatives not to) disclose and to treat and hold as confidential all Confidential Information and, except as otherwise expressly permitted by this Agreement, refrain from using any of the Confidential Information (other than for the benefit of the Company, the Purchaser, Parent and their respective Subsidiaries as an employee thereof after the Closing Date) and, upon the request of the Company at any time after the Closing, deliver promptly to the Purchaser or destroy all tangible embodiments (and all copies) of the Confidential Information which are in such Seller's possession or under such Seller's control and provide confirmation thereof in writing. In the event that any Seller or any of such Seller's Affiliates or Representatives is requested or required (by oral question or request for information or documents in any legal proceeding, interrogatory, subpoena, civil investigative demand, or similar process) to disclose any Confidential Information, such Seller shall notify the Purchaser promptly of the request or requirement so that the Purchaser may seek an appropriate protective order or waive compliance with the provisions of this Section 5.03. If, in the absence of a protective order or the receipt of a waiver hereunder, such Seller or any of such Seller's Affiliates or Representatives is compelled to disclose any Confidential Information to any tribunal, such Seller may disclose the Confidential Information to the tribunal; provided that such Seller shall use such Seller's commercially reasonable efforts to obtain, at the request and expense of the Purchaser, an order or other assurance that confidential treatment shall be accorded to such portion of the Confidential Information required to be disclosed as the Purchaser shall designate. Notwithstanding the foregoing, for purposes of this Agreement, Confidential Information shall not include information which is or becomes generally available to the public other than as a result of a disclosure by any Seller or any of such Seller's Affiliates or Representatives in violation of this Agreement or any other confidentiality obligation to which any of them is bound.

(e) If, at the time of enforcement of the covenants contained in this Section 5.03 (the "Restrictive Covenants"), a court shall hold that the duration, scope or area restrictions stated herein are unreasonable under circumstances then existing, the parties agree that the maximum duration, scope or area reasonable under such circumstances shall be substituted for the stated duration, scope or area and that the court shall be allowed and directed to revise the restrictions contained herein to cover the maximum period, scope and area permitted by Law. Each Seller has consulted with legal counsel regarding the Restrictive Covenants and based on such consultation has determined and hereby acknowledges that the Restrictive Covenants are reasonable in terms of duration, scope and area restrictions and are necessary to protect the goodwill of the Company's business and the substantial investment in the Company made by the Purchaser hereunder. Each Seller further acknowledges and agrees that the Restrictive Covenants are being entered into by it in connection with the sale by such Seller of the Units owned by such Seller and the goodwill of the Company's business pursuant to this Agreement and not directly or indirectly in connection with such Seller's relationship with the Company.

(f) If any Seller or an Affiliate, Subsidiary, officer, director, employee, representative or agent of any Seller breaches, or threatens to commit a breach of, any of the Restrictive Covenants, Purchaser and the Company shall have the following rights and remedies, each of which rights and remedies shall be independent of the others and severally enforceable, and each of which is in addition to, and not in lieu of, any other rights and remedies available to Purchaser, the Company or any of their respective Affiliates at Law or in equity:

(i) the right to seek to have the Restrictive Covenants specifically enforced by any court of competent jurisdiction, it being agreed that any breach or threatened breach of the Restrictive Covenants would cause irreparable injury to the Company and that money damages would not provide an adequate remedy to the Company; and

(ii) the right to seek to require such Seller to account for and pay over to the Company any profits, monies, accruals, increments or other benefits derived or received by such Person as the result of any transactions constituting a breach of the Restrictive Covenants.

(g) In the event of any breach or violation by any Seller of any of the Restrictive Covenants, the time period of such covenant as it relates to that breaching Seller only shall be tolled until such breach or violation is resolved.

5.04 Conditions

. Subject to the terms of the covenants in Section 8.05, the Sellers and the Company shall use commercially reasonable efforts to cause the conditions set forth in Section 2.01 to be satisfied and to consummate the transactions contemplated herein as soon as reasonably possible after the satisfaction of the conditions set forth in Article II (other than those to be satisfied at the Closing).

5.05 Exclusive Dealing

. During the period from the date of this Agreement through the Closing or the earlier termination of this Agreement pursuant to Section 7.01, neither the Company nor each Seller shall (and the Company and each Seller shall cause their respective Affiliates, Subsidiaries and Representatives not to), directly or indirectly, take any action to encourage, initiate or engage in discussions or negotiations with, provide any information to, or enter into any letter of intent, Contract or understanding with, any

Person (other than the Purchaser, Parent and their Representatives) concerning the purchase of any Units or any merger, sale of all, substantially all or any material portion of the assets of the Company and its Subsidiaries (other than sales of inventory in the ordinary course of business) or similar transactions involving the Company and its Subsidiaries. The Sellers Representative and the Company shall notify the Purchaser in writing promptly if any Person makes any proposal, offer or material inquiry with respect to any of the foregoing, such notice to include the material terms of any such proposal or other inquiry and the name of the Person making such proposal (unless such disclosure would violate any existing confidentiality obligations to such Person that arose prior to execution of this Agreement). Each Seller agrees that, during the period from the date hereof to the earlier of the Closing and the date that this Agreement is terminated in accordance with Section 7.01, such Seller will not, directly or indirectly, sell, transfer, dispose or otherwise convey ownership of, or legal right or entitlement to, any of such Seller's Units. Any sale, transfer, disposition or other conveyance in violation of this Section 5.05 shall be null and void. The Company agrees that it will not record in the unit register or other books and records of the Company any transfer in violation of this Section 5.05.

5.06 Notification

. The Company shall promptly notify the Purchaser if the Sellers Representative, any Restricted Seller or the Company obtains knowledge of (a) the occurrence or non-occurrence of any event the occurrence or non-occurrence of which (i) results in any of the representations or warranties contained in Article III or Article IIIA being untrue or inaccurate in any material respect (or, in the case of any representation or warranty qualified by its terms by materiality, including the words "material" or "Company Material Adverse Effect", then untrue or inaccurate in any respect) or (ii) would be reasonably likely to cause any of the conditions set forth in Section 2.01 to be incapable of satisfaction, and (b) any material breach of, or failure to comply in any material respect with, any covenant of Sellers or the Company hereunder. Sellers and the Company acknowledge that no such notification or update by Sellers or the Company, however, shall be deemed to affect (i) any right of the Purchaser to terminate this Agreement pursuant to Section 7.01 or (ii) the indemnification obligations of Sellers under Section 8.01.

ARTICLE VI

COVENANTS OF THE PURCHASER

6.01 Books and Records.

(a) From and after the Closing, for a period of four (4) years, the Purchaser shall, and shall cause the Company to, provide the Sellers Representative or any Seller and its or their authorized representatives, subject to reasonable restrictions imposed by the Company or the Purchaser from time to time, with reasonable access, during normal business hours and upon reasonable notice, to the books and records (for the purpose of examining and copying at the sole expense of the Sellers Representative or such Seller) of the Company and its Subsidiaries with respect to periods or occurrences prior to or on the Closing Date, in each case, as may be reasonably required by any Seller in connection with any legal proceedings by or against, or Tax audits against, governmental investigations of, or compliance with Law by any Seller or its, his or her Affiliates; provided, however, that (x) such access shall be subject to the Purchaser's and the Company's reasonable security measures and shall not unreasonably interfere with the operations of the Purchaser, the Company and its Subsidiaries, (y) nothing herein shall require the Purchaser, the Company or any of its Subsidiaries to provide access to, or to disclose any information to, the Sellers Representative or a Seller if such access or disclosure in the reasonable judgment of legal counsel to the Purchaser, the Company or any of its Subsidiaries would be reasonably likely to (i) waive any legal privilege or (ii) be in violation of applicable Law or the provisions of any agreement to which the Purchaser, the Company or any of its Subsidiaries is a party and (z) the Sellers Representative or any such Seller shall treat as confidential any Confidential Information of the Company that it receives following the Closing whether pursuant to this Section 6.01(a) or otherwise and shall not disclose such information other than (1) as required by Law or legal process, (2) in connection with claims arising from this Agreement, or (3) on a need to know basis to any Seller or its representatives who agree in advance to maintain the confidentiality of such information in accordance with this clause (z).

(b) The Purchaser shall not, and shall not permit any of its Subsidiaries to, for a period of five (5) years following the Closing Date, destroy or otherwise dispose of any of the books and records of any of the Company or its Subsidiaries for any period prior to the Closing Date that are required to be retained for such period of time under the current retention policies of the Company and its Subsidiaries without first giving reasonable prior notice to the Sellers Representative and offering to surrender to the Sellers Representative such books and records or any portion thereof which the Purchaser or any of its Subsidiaries may intend to destroy or dispose of.

6.02 Notification. From the date hereof until the Closing Date, the Purchaser shall promptly notify the Company if the Purchaser or Parent obtains knowledge (a) of the occurrence or non-occurrence of any event the occurrence or non-occurrence of which (i) results in any of its representations or warranties contained in Article IV being untrue or inaccurate in any material respect (or, in the case of any representation or warranty qualified by its terms by materiality, including the words "material" or "Purchaser Material Adverse Effect", then untrue or inaccurate in any respect) or (ii) would be reasonably likely to cause any of the conditions set forth in Section 2.02 to be incapable of satisfaction, and (b) any material breach of, or failure to comply in any material respect with, any covenant of the Purchaser or Parent hereunder. Purchaser and Parent acknowledge that no such notification or update by Purchaser, however, shall be deemed to affect (i) any right of the Sellers Representative to terminate this Agreement pursuant to Section 7.01 or (ii) the indemnification obligations of the Purchaser under Section 8.01.

6.03 Director and Officer Liability and Indemnification. For a period of six (6) years after the Closing Date, the Purchaser shall not, and shall not permit the Company or any of its Subsidiaries to amend, repeal or modify any provision in the Company's or any of its Subsidiaries articles of incorporation, bylaws, limited liability company agreement or other applicable organizational or governing document relating to the exculpation or indemnification rights of any current or former officer, manager or member (the "D&O Indemnified Persons") in a manner that would adversely affect such exculpation or indemnification rights of any such current or former officer or director (unless required by Law), it being the intent of the parties that the D&O Indemnified Persons shall continue to be entitled to such exculpation and indemnification rights to the fullest extent of the law to the extent provided in the Company's or any of its Subsidiaries' articles of incorporation, bylaws, limited liability company agreement or other applicable organizational or governing document as of the date hereof relating to exculpation or indemnification. If the Purchaser, the Company or any of its Subsidiaries or any of their respective successors or assigns (i) shall consolidate with or merge into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) shall transfer all or substantially all of its properties and assets to any Person, then, and in each such case, proper provisions shall be made so that the successors and assigns of the Purchaser and the Company and its Subsidiaries shall assume all of the obligations set forth in this Section 6.03. The provisions of this Section 6.03 are intended for the benefit of, and will be enforceable by, each D&O Indemnified Person and his or her heirs and representatives, and are in addition to, and not in substitution for, any other rights to indemnification or contribution that any such person may have had by contract or otherwise. For the avoidance of doubt, the expense of any "tail" insurance policy obtained by the Company or its managers with respect to managers liability insurance shall be the responsibility of the Sellers, either directly or indirectly through the use of the Company's Cash on Hand prior to the Closing.

6.04 Conditions

. Subject to the terms of the covenants in Section 8.05, Purchaser shall use its commercially reasonable efforts to cause the conditions set forth in Section 2.02 to be satisfied and to consummate the transactions contemplated herein as soon as reasonably possible after the satisfaction of the conditions set forth in Article II (other than those to be satisfied at the Closing).

6.05 Employment and Benefit Arrangements

.

(a) The Purchaser shall take all actions required so that eligible employees of the Company and its Subsidiaries shall receive service credit with respect to service with the Company and its Subsidiaries (or their predecessors) prior to the Closing Date for purposes of eligibility and vesting under any employee benefit plans and arrangements (excluding any defined benefit pension plans and equity or equity-related plans and arrangements) in which each such employee is eligible to participate following the Closing Date; provided that no retroactive contributions will be required and provided, further, except to the extent such credit would result in the duplication of benefits. To the extent that the Purchaser modifies any group health coverage or benefit plans under which the employees of the Company and its Subsidiaries participate, the Purchaser shall use commercially reasonable efforts to waive any applicable waiting periods, pre-existing conditions or actively-at-work requirements and shall use commercially reasonably efforts to give such employees credit under the new coverages or benefit plans for deductibles, co-insurance and out-of-pocket payments that have been paid during the year in which such coverage or plan modification occurs. This Section 6.05 shall survive the Closing, and shall be binding on all successors and assigns of the Purchaser, the Company and its Subsidiaries. Through December 31, 2016, Purchaser shall take all actions required so that each employee of the Company and its Subsidiaries (determined as of the Closing Date) who continues in employment with the Company and its Subsidiaries during such period (i) receives base compensation and bonus opportunities (excluding any equity or equity-related opportunities) that are no less favorable than that provided by the Company or its Subsidiaries to such employee immediately prior to the Closing Date, (ii) receives benefits that, in the aggregate, are substantially comparable or greater in the aggregate to those benefits provided by the Company or its Subsidiaries under the Benefit Plans (other than equity or equity-related arrangements) to such employee immediately prior to the Closing Date or are substantially comparable in the aggregate to those benefits provided by Purchaser or its Affiliates to their similarly situated employees and (iii) to the extent that any such employee is terminated for other than "cause" following the Closing and prior to December 31, 2016, receives severance pay that is no less than the severance pay that would have been payable to such employee under the severance policy in effect immediately prior to the Closing Date.

(b) Nothing contained in this Section 6.05 shall obligate Purchaser, Parent, the Company, or any of the Company's Subsidiaries to continue the employment of any employee of, or the service relationship of any other service provider to, the Company or any of its Subsidiaries for any period of time after the Closing, and this Section 6.05 shall not be construed to limit the ability of Purchaser, Parent, the Company, or any of the Company's Subsidiaries to terminate the employment of any employee of, or the service relationship of any other service provider to, the Company or any of its Subsidiaries following the Closing in accordance with applicable Law and any pre-existing contractual relationship. Further, this Section 6.05 shall be binding upon and inure solely to the benefit of the parties to this Agreement, and nothing in this Section 6.05, express or implied, shall confer upon any other Person any rights or remedies of any nature whatsoever under or by reason of this Section 6.05 or be construed as an amendment, waiver, termination, or creation of any benefit or compensation plan, program, agreement, Contract, policy, or arrangement of Purchaser, Parent, the Company, or any of the Company's Subsidiaries.

6.06 Attorney Client Prvilege and Waiver

. Purchaser hereby agrees that the attorney client privilege with respect to communications by and between the officers, directors or owners of the Company or any of its Subsidiaries and the Company's legal counsel relating to the transactions contemplated by this Agreement and occurring prior to the Closing shall belong to the Sellers and not the Company, which privilege may be asserted at any time following the Closing by the Sellers Representative on behalf of the Sellers. In addition, the Purchaser hereby waives any conflict that may exist and further consents to counsel for the Company and Sellers in this transaction representing Sellers and/or Sellers Representative in connection with any claim, lawsuit or arbitration arising out of or relating to this Agreement.

ARTICLE I

TERMINATION

1.01 Termination

. This Agreement may be terminated at any time prior to the Closing only as follows:

(a) by the mutual written consent of the Sellers Representative (on behalf of the Sellers and the Company) and the Purchaser;

(b) by the Purchaser, if there has been a material violation or breach by the Company or any Seller of any covenant, representation or warranty contained in this Agreement that (i) has prevented the satisfaction of any condition to the obligations of the Purchaser at the Closing and such violation or breach has not been waived by the Purchaser and (ii) is not capable of being cured or, if capable of being cured, has not been cured by the Company or such Seller prior to the earlier of (A) ten (10) Business Days after receipt by the Sellers Representative of written notice thereof from the Purchaser and (B) the Termination Date; provided that Purchaser may not terminate this Agreement pursuant to this Section 7.01(b) if Purchaser is then in breach of this Agreement so as to cause any of the conditions set forth in Section 2.01 not to be satisfied;

(c) by the Sellers Representative (on behalf of the Sellers and the Company), if there has been a material violation or breach by the Purchaser or Parent of any covenant, representation or warranty contained in this Agreement that (i) has prevented the satisfaction of any condition to the obligations of the Company and the Sellers at the Closing and such violation or breach has not been waived by the Company and the Sellers Representative and (ii) is not capable of being cured or, if capable of being cured, and has not been cured by the Purchaser or Parent, as applicable, prior to the earlier of (A) ten (10) Business Days after receipt by the Purchaser of written notice thereof from the Sellers Representative and (B) the Termination Date; provided that the Sellers Representative may not terminate this Agreement pursuant to this Section 7.01(c) if any Seller or the Company is then in breach of this Agreement so as to cause any of the conditions set forth in Section 2.02 not to be satisfied;

(d) by the Purchaser, if the transactions contemplated hereby have not been consummated on or before November 29, 2016 (the "Termination Date"); provided that the Purchaser shall not be entitled to terminate this Agreement pursuant to this Section 7.01(d) if the Purchaser's breach of this Agreement has been the cause of, or resulted in, the failure of the Closing to occur prior to such Termination Date;

(e) by the Sellers Representative (on behalf of the Sellers and the Company), if the transactions contemplated hereby have not been consummated on or before the Termination Date; provided that the Sellers Representative shall not be entitled to terminate this Agreement pursuant to this Section 7.01(e) if the Company's or any Seller's breach of this Agreement has been the cause of, or resulted in, the failure of the Closing to occur prior to such Termination Date; or

(f) by the Purchaser or the Sellers Representative (on behalf of the Sellers and the Company) if there is in effect a final nonappealable Order, which prohibits the consummation of the transactions contemplated by this Agreement; provided that neither Sellers Representative nor Purchaser may terminate this Agreement pursuant to this Section 7.01(f) if the issuance of such Order was caused by or resulting from the material breach of such Person's (or, in the case of the Sellers Representative, the Company's or any Seller's) obligations under this Agreement.

The party desiring to terminate this Agreement pursuant to clauses (b), (c), (d), (e) or (f) of this Section 7.01 shall give written notice of such termination to the other parties hereto.

1.02 Effect of Termination

. In the event this Agreement is terminated by either the Purchaser or the Sellers Representative as provided above, (a) the provisions of this Agreement shall immediately become void and of no further force and effect (other than this Section 7.02 and Article X (with the exception of Section 10.22) hereof which shall survive the termination of this Agreement), provided, however, that the Confidentiality Agreement will survive the termination of this Agreement in accordance with its terms, and (b) there shall be no liability on the part of any of the Purchaser, Parent, the Company, any of its Subsidiaries or the Sellers to one another, except for any Willful Breach of this Agreement by the Company, Purchaser or Parent prior to the time of such

termination. Nothing in this Article VII shall be deemed to impair the right of any party to compel specific performance by another party of its obligations under this Agreement in accordance with the terms of this Agreement.

ARTICLE II

ADDITIONAL COVENANTS

2.01 Survival of Representations, Warranties, Covenants, Agreements and Other Provisions; Indemnification

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(a) Survival. Each representation and warranty contained in Article III, Article IIIA and Article IV, the Schedules or in any certificate delivered in connection with this Agreement shall survive the Closing and shall terminate on the eighteen (18) month anniversary of the Closing Date, except that the representations and warranties in (A) Section 3.01 (Organization and Corporate Power), Section 3.02 (Subsidiaries), Section 3.03 (Authorization; No Breach; Valid and Binding Agreement), Section 3.04 (Capitalization), Section 3.08 (Tax Matters),) and Section 3.20 (Brokerage) (collectively, the "Company Fundamental Representations"), (B) Section 3A.01 (Organization and Power), Section 3A.02 (Authorization; No Breach; Valid and Binding Agreement), Section 3A.03 (Capitalization) and Section 3A.06 (Brokerage) (collectively, the "Seller Fundamental Representations") and (C) Section 4.01 (Organization and Corporate Power), Section 4.02 (Authorization), Section 4.06 (Brokerage), Section 4.11 (Capital Stock), Section 4.12 (Parent Shares) and Section 4.14 (No Shareholder Approval) (collectively, the "Purchaser Fundamental Representations") shall survive for a time period equal to the longest statute of limitations permitted by applicable Law (after giving effect to any permitted extension thereof) in respect of a breach or inaccuracy of a representation or warranty. The covenants and agreements contained in this Agreement (i) that are required to be performed in whole prior to the Closing shall survive the Closing and shall terminate on the twelve (12) month anniversary of the Closing Date and (ii) that require performance after the Closing Date shall survive until the date or dates expressly specified therein or, if not so specified, until performed in accordance with their terms. Notwithstanding the foregoing or anything else to the contrary in this Agreement, in no case shall the expiration of the representations, warranties, covenants and agreements affect any claim for indemnification thereunder if written notice of such breach is given to the party or parties providing such indemnification pursuant to the terms of this Agreement prior to such expiration.

(b) Indemnification With Respect to Company Matters. Subject to the limitations in Section 8.01(e), as applicable, from and after the Closing Date, the Purchaser and its Affiliates (including the Company and its Subsidiaries after the Closing) and their respective current and future stockholders, officers, directors, employees, agents, partners and representatives, and each of their successors and assigns (collectively, the "Purchaser Indemnified Parties") shall be indemnified and held harmless by the Sellers (severally and not jointly, in accordance with their respective Allocation Percentages) against and reimbursed for any and all loss, liability, demand, judgment, Claim, cost, damage, deficiency, Tax, penalty, fine or expense, whether or not arising out of third-party claims (including interest, penalties and reasonably incurred legal, consulting and other professional fees and expenses and all amounts paid in investigation, defense or settlement of any of the foregoing, but excluding any and all amounts in the nature of punitive damages, except to the extent awarded to a third-party other than any Purchaser Indemnified Party) (collectively, "Losses"), which any such Purchaser Indemnified Party may suffer, sustain or become subject to, as a result of or in connection with:

(i) any breach by the Company of any representation or warranty made by the Company in this Agreement or any of the Disclosure Schedules attached hereto, or in any of the certificates furnished by the Company pursuant to this Agreement;

(ii) any nonfulfillment or breach of any covenant or agreement by the Company under this Agreement;

(iii) any unpaid Indebtedness and unpaid Seller Transaction Expenses, in each case as of the Closing; and/or

(iv) (A) all Taxes (or the non-payment thereof) of the Company and its Subsidiaries for all Pre-Closing Tax Periods, (B) any and all Taxes of any member of an affiliated, consolidated, combined, or unitary group of which the Company or its Subsidiaries (or any predecessor) is or was a member on or prior to the Closing Date, including pursuant to Treasury Regulation Section 1.1502-6 (or any analogous or similar state, local, or foreign Law), and (C) any and all Taxes of any Person (other than the Company and its Subsidiaries) imposed on the Company or its Subsidiaries as a transferee or successor, by contract or pursuant to any Law, rule or regulation, which Taxes relate to an event or transaction occurring before the Closing.

(c) Indemnification With Respect to Seller Matters. Subject to the limitations in Section 8.01(e), as applicable, from and after the Closing Date, the Purchaser Indemnified Parties shall be indemnified and held harmless by each of the Sellers (severally and not jointly, in accordance with their respective Allocation Percentages) against and reimbursed for any and all Losses which any such Purchaser Indemnified Party may suffer, sustain or become subject to, as a result of or in connection with:

(i) any breach by such Seller of any representation or warranty made by such Seller in Article IIIA of this Agreement or any of the Disclosure Schedules attached hereto, or in any of the certificates furnished by such Seller pursuant to this Agreement; or

(ii) any nonfulfillment or breach of any covenant or agreement by such Seller under this Agreement.

(d) Indemnification With Respect to Purchaser and Parent Matters. Subject to the limitations set forth in Section 8.01(e), from and after the Closing Date, the Sellers and each of their respective former, current and future stockholders, officers, directors, employees, agents, partners and representatives, and each of their successors and assigns (collectively, the "Seller Indemnified Parties") shall be indemnified and held harmless by the Purchaser against and reimbursed for any and all Losses which any such Seller Indemnified Party may suffer, sustain or become subject to, as a result of or in connection with:

(i) any breach by the Purchaser or Parent of any representation or warranty made by the Purchaser or Parent in this Agreement or any of the Disclosure Schedules attached hereto, or in any of the certificates furnished by the Purchaser or Parent pursuant to this Agreement; or

(ii) any nonfulfillment or breach of any covenant, agreement or other provision by the Purchaser or Parent under this Agreement.

(e) Limits on Indemnification. Notwithstanding anything contained in this Section 8.01 to the contrary, and except in the case of fraud:

(i) Purchaser Indemnified Parties shall not be entitled to any indemnification pursuant to Section 8.01(b), (x) with respect to any individual occurrence, event or circumstance, unless and until the aggregate of all Losses subject to indemnification resulting from such individual occurrence, event or circumstance exceeds $50,000 (the "Mini-Basket") (it being agreed, however, that the dollar value of Losses resulting from "individual" occurrences, events or circumstances that relate to or result from the same cause or circumstance will be aggregated for purposes of this clause (x)), and (y) unless and until the aggregate dollar amount of all Losses that would otherwise be indemnifiable pursuant to Section 8.01(b) exceeds $3,240,000 (the "Deductible"), and then only to the extent such Losses exceed the Deductible; provided, however, that the foregoing limitations shall not apply in the case of (A) a claim for any breach of any Company Fundamental Representation or (B) a claim pursuant to Section 8.01(b)(ii), Section 8.01(b)(iii) or Section 8.01(b)(iv) (and any Losses with respect to such claims shall not count toward the Deductible).

(ii) Seller Indemnified Parties shall not be entitled to any indemnification pursuant to Section 8.01(d), (x) with respect to any individual occurrence, event or circumstance, unless and until the aggregate of all Losses subject to indemnification resulting from such individual occurrence, event or circumstance exceeds the Mini-Basket (it being agreed, however, that the dollar value of Losses resulting from "individual" occurrences, events or circumstances that relate to or result from the same cause or circumstance will be aggregated for purposes of this clause (x)), and (y) unless and until the aggregate dollar amount of all Losses that would otherwise be indemnifiable pursuant to Section 8.01(d) exceeds the Deductible, and then only to the extent such Losses exceed the Deductible; provided, however, that the foregoing limitations shall not apply in the case of (A) a claim for any breach of any Purchaser Fundamental Representation or (B) a claim pursuant to Section 8.01(d)(ii) (and any Losses with respect to such claims shall not count toward the Deductible).

(iii) Purchaser Indemnified Parties shall not be entitled to indemnification pursuant to Section 8.01(b) in excess of the amount then remaining in the Indemnity Escrow Account (the "Indemnity Escrow Cap"). The Indemnity Escrow Amount shall be the sole and exclusive remedy of the Purchaser Indemnified Parties to recover for any indemnifiable Losses pursuant to Section 8.01(b), and once the Indemnity Escrow Amount is depleted, the Purchaser Indemnified Parties shall have no further rights to indemnification pursuant to Section 8.01(b); provided, however, that the foregoing limitation shall not apply in the case of (A) a claim for any breach of any Company Fundamental Representation or (B) a claim pursuant to Section 8.01(b)(ii), Section 8.01(b)(iii) or Section 8.01(b)(iv).

(iv) Seller Indemnified Parties shall not be entitled to indemnification pursuant to Section 8.01(d) in excess of the amount of the Indemnity Escrow Cap at Closing; provided, however, that the foregoing limitation shall not apply in the case of (A) a claim for any breach of any Purchaser Fundamental Representation or (B) a claim pursuant to Section 8.01(d)(ii).

(v) In the event of any indemnification resulting from a breach of any Company Fundamental Representation or pursuant to Section 8.01(b)(ii), Section 8.01(b)(iii) or Section 8.01(b)(iv), the Purchaser Indemnified Parties must first make a claim against the Indemnity Escrow Amount and, to the extent funds therein are insufficient to satisfy the full amount of Losses arising from such claims, then the Purchaser Indemnified Parties may bring a claim against the Sellers (severally and not jointly), with each such Seller only being responsible for its Allocation Percentage of any indemnifiable Losses.

(vi) In the event of any indemnification claim pursuant to Section 8.01(c), the Purchaser Indemnified Parties shall be entitled to indemnification solely from the Seller in breach of such representation, warranty, covenant,

agreement or other provision pursuant to Section 8.01(c), and shall not be entitled to bring a claim against the Indemnity Escrow Account or any non-breaching Seller.

(vii) In no event shall a Seller be liable hereunder for an amount that exceeds the total consideration actually received by such Seller with respect to its Units pursuant to this Agreement.

(viii) For purposes of Section 8.01(b), Section 8.01(c), Section 8.01(d) and this Section 8.01(e), breaches of representations and warranties in Article III, Article IIIA and Article IV, as applicable, and the calculation of any Losses relating thereto will be determined without giving effect to any "material", "in all material respects", "Company Material Adverse Effect", "Purchaser Material Adverse Effect" or similar qualifications.

(f) Determination of Loss; Mitigation

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(i) The amount of any indemnifiable Losses under Section 8.01(b) shall be calculated net of any amounts actually recovered by the Indemnitee with respect thereto from any third party with respect thereto (net of any collection costs) under, or pursuant to, any insurance policy. If after an Indemnitee has received indemnification payments pursuant to Section 8.01(b) such Indemnitee (or its Affiliates) actually recovers cash (net of any collection costs) under, or pursuant to, any insurance policy relating to the claim or matter for which an indemnification payment was previously received, then such Indemnitee shall promptly pay to the applicable Indemnitor(s) the amount of such insurance proceeds (up to the amount of the prior payments to such Indemnitee by such Indemnitor(s)).

(ii) Each party hereto shall take all steps required by applicable Law to mitigate any of its Losses as promptly as reasonably practicable upon becoming aware of any event which would reasonably be expected to, or does, give rise to an indemnification claim under this Section 8.01.

(iii) Losses shall be determined without duplication of any other Loss for which an indemnification claim has been made or could be made under any other representation, warranty, covenant or agreement. An Indemnitee shall not be entitled to recover more than once for the same Loss.

(g) Manner of Payment; Escrow. Any indemnification of the Purchaser Indemnified Parties or the Seller Indemnified Parties pursuant to this Section 8.01 shall be effected by wire transfer of immediately available funds from the Sellers or Purchaser, as the case may be, to an account designated in writing by the applicable Purchaser Indemnified Party or Seller Indemnified Party, as the case may be, within five (5) days after a determination thereof that is binding on the Indemnitor; provided, however, that (i) any indemnification owed by any Seller to the Purchaser Indemnified Parties pursuant to Section 8.01(b) (other than in the case of a breach of a Company Fundamental Representation or pursuant to Section 8.01(b)(ii), Section 8.01(b)(iii) or Section 8.01(b)(iv)) shall be satisfied exclusively out of the Indemnity Escrow Amount and (ii) any indemnification finally determined pursuant to this Agreement to be owed by any Seller to the Purchaser Indemnified Parties or by Purchaser to the Seller Indemnified Parties, as the case may be, may, at the Indemnitee's election, be satisfied by set-off against any amounts due or payable by such Indemnitee to the Indemnitor. The Sellers will be entitled to receive the remaining Indemnity Escrow Amount in accordance with the terms of the Escrow Agreement, at which time Purchaser and the Sellers Representative shall cause the Escrow Agent to distribute to each Seller the portion of such balance to which such Seller is entitled (it being understood that from and after the release of funds to Sellers from the Indemnity Escrow Account in accordance with the Escrow Agreement, such funds shall no longer be available to satisfy claims under Section 8.01(b) of this Agreement (other than in the case of a breach of a Company Fundamental Representation or pursuant to Section 8.01(b)(ii) or Section 8.01(b)(iii), Section 8.01(b)(iv)) and Purchaser Indemnified Parties shall not seek payment directly from Sellers in satisfaction of their respective indemnification obligations with respect to such claims pursuant to Section 8.01(b) (other than in the case of a breach of a Company Fundamental Representations or pursuant to Section 8.01(b)(ii), Section 8.01(b)(iii) or Section 8.01(b)(iv)).

(h) Defense of Third Party Claims

. Any Person making a claim for indemnification under this Section 8.01 (any such Person, an "Indemnitee") shall notify the indemnifying party (such party, an "Indemnitor") of the claim in writing promptly after receiving written notice of any Claim against it (if by a third party), describing the Claim, the amount thereof (if known and quantifiable) and the basis thereof; provided, that the failure to so notify an Indemnitor shall not relieve the Indemnitor of its obligations hereunder except to the extent that (and only to the extent that) such failure shall have caused the Losses for which the Indemnitor is obligated to be materially greater than such damages would have been had the Indemnitee given the Indemnitor prompt notice hereunder. Any Indemnitor shall be entitled to participate in the defense of such Claim giving rise to an Indemnitee's claim for indemnification at such Indemnitor's expense, and at its option (subject to the limitations set forth below) shall be entitled to assume the defense thereof by appointing a counsel reasonably acceptable to the Indemnitee to be the lead counsel in connection with such defense (with the fees and expenses of such counsel being borne by the Indemnitor); provided, that prior to the Indemnitor assuming control of such defense it shall first verify to the Indemnitee in writing that, subject to the limitations provided in Section 8.01(e), such Indemnitor shall be fully responsible (with no reservation of any rights) for all Losses relating to such claim for indemnification and that it

shall, subject to the stated limitations, provide full indemnification to the Indemnitee with respect to such Claim giving rise to such claim for indemnification hereunder; and provided, further, that:

(i) the Indemnitee shall be entitled to participate in the defense of such Proceeding or other claim and to employ counsel of its choice for such purpose; provided, that the fees and expenses of such separate counsel shall be borne by the Indemnitee (other than any fees and expenses of such separate counsel that are incurred prior to the date the Indemnitor has notified the Indemnitee that it intends to assume control of such defense which, notwithstanding the foregoing, shall be borne by the Indemnitor, and except that the Indemnitor shall pay all of the fees and expenses of such separate counsel if the Indemnitee has been advised by counsel that a reasonable likelihood exists of a material conflict of interest between the Indemnitor and the Indemnitee);

(ii) the Indemnitor shall not be entitled to assume control of such defense (unless otherwise agreed to in writing by the Indemnitee) and shall pay the reasonable fees and expenses of counsel retained by the Indemnitee if (1) the claim for indemnification relates to or arises in connection with any criminal or quasi-criminal Claim; (2) the Claim seeks an injunction or equitable relief against the Indemnitee; (3) the Indemnitee has been advised by counsel that a reasonable likelihood exists of a conflict of interest between the Indemnitor and the Indemnitee; (4) upon petition by the Indemnitee, the appropriate court rules that the Indemnitor failed or is failing to vigorously prosecute or defend such Claim; or (5) the Indemnitee reasonably believes that the Losses relating to the third-party Claim would not exceed the Deductible or would exceed the maximum amount that the Indemnitee could then be entitled to recover for such Claim under the applicable provisions of Section 8.01(e); provided if the reason that the Indemnitee assumes control of the Proceeding is (3) or (5), then the counsel chosen by the Indemnitee to defend the Claim must be reasonably acceptable to the Indemnitor;

(iii) if the Indemnitor shall control the defense of any such Claim, the Indemnitor shall obtain the prior written consent of the Indemnitee before entering into any settlement of such Claim if, pursuant to or as a result of such settlement, injunctive or other equitable relief will be imposed against the Indemnitee or if such settlement does not expressly and unconditionally release the Indemnitee from all liabilities (monetary or otherwise) with respect to such Claim, with prejudice;

(iv) if the Indemnitee is a Purchaser Indemnified Party with respect to any third-party Claim, the Indemnitee may not settle or compromise any third-party Claim or consent to the entry of any judgment in favor of any third party with respect to which indemnification is being sought hereunder without the prior written consent of the Sellers Representative, acting on behalf of the Sellers, such consent not to be unreasonably withheld, conditioned or delayed; and

(v) the Indemnitee (if the Indemnitor has assumed the defense of a third-party Claim) or the Indemnitor (if the Indemnitor has not or is not permitted to assume the defense of a third-party Claim) shall reasonably assist and cooperate in good faith in managing such defense.

(i) Direct Claims. Any claim by an Indemnitee on account of Losses which do not result from a third-party Claim (a "Direct Claim") will be asserted by giving the Indemnitor reasonably prompt written notice thereof (such notice, a "Direct Claim Notice"). A Direct Claim Notice will describe the Direct Claim in reasonable detail and indicate the estimated amount of Losses (if known and quantifiable) that have been or may be sustained by the Indemnitee. The Indemnitee and the Indemnitor may discuss such Direct Claim for a period of thirty (30) days from the date the Indemnitor receives such Direct Claim Notice (such period, or such longer period as agreed in writing by the parties, is hereinafter referred to as the "Discussion Period"), and all such discussions (unless otherwise agreed by the Indemnitee and the Indemnitor) shall be governed by Rule 408 of the Federal Rules of Evidence and any applicable similar Law. If the Direct Claim that is the subject of the Direct Claim Notice has not been resolved prior to the expiration of the Discussion Period, the Indemnitor and the Indemnitee may submit the dispute for resolution to a court of competent jurisdiction in accordance with Sections 10.11 and 10.17 hereof and each will be free to pursue such remedies as may be available to them on the terms and subject to the provisions of this Agreement.

(j) Treatment of Indemnification Payments

. The parties agree that any indemnification payments made pursuant to this Agreement shall be treated for Tax purposes as an adjustment to the Final Cash Purchase Price, unless otherwise required by applicable Law.

(k) Exclusive Remedy. From and after the Closing, except (i) as provided in Section 1.05 and Section 5.03, (ii) for all equitable remedies under this Agreement, or (iii) in the case of fraud, the indemnification provided for under this Section 8.01 shall be the sole and exclusive remedy of the parties, whether in contract, tort or otherwise, for all matters arising out of or relating to this Agreement and the transactions contemplated hereby, including for any inaccuracy or breach of any representation, warranty, covenant or agreement set forth herein or in any certificate or instrument delivered in connection herewith.

2.02 Tax Matters

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(a) Straddle Periods. In the case of any Straddle Period, the amount of any Taxes based on or measured by income, sales, payroll or receipts of the Company and its Subsidiaries for the Pre-Closing Tax Period shall be determined based on an interim closing of the books as of the close of business on the Closing Date, and the amount of other Taxes of the Company and its Subsidiaries for a Straddle Period which relate to the Pre-Closing Tax Period shall be deemed to be the amount of such Tax for the entire taxable period multiplied by a fraction the numerator of which is the number of days in the taxable period ending on the Closing Date and the denominator of which is the number of days in the Straddle Period.

(b) Responsibility for Filing Tax Returns. Sellers Representative shall prepare or cause to be prepared and file or cause to be filed all Tax Returns for the Company and its Subsidiaries for all taxable periods ending prior to or including the Closing Date, the due date of which (including extensions) is after the date hereof. All such Tax Returns shall be prepared and filed consistent with the past practice of the Company and its Subsidiaries, except as otherwise required by applicable law. At least fifteen (15) days prior to the date on which each such Tax Return is filed, the Sellers Representative shall submit such Tax Return to the Purchaser for the Purchaser's review, comment and approval (such approval not to be unreasonably withheld, conditioned or delayed), and the Sellers Representative shall incorporate any reasonable and timely comments provided by the Purchaser.

(c) Transfer Taxes. The Purchaser will be responsible for all transfer, documentary, sales, use, stamp, registration and other such Taxes, and all conveyance fees, recording charges and other fees and charges (including any penalties and interest) incurred in connection with consummation of the transactions contemplated by this Agreement (collectively, "Transfer Taxes"). The Sellers agree to cooperate with the Purchaser in the filing of any returns with respect to the Transfer Taxes, including promptly supplying any information in their possession that is reasonably necessary to complete such returns.

(d) Filing and Amendment of Tax Returns. Without the prior written consent of the Sellers Representative (such consent not to be unreasonably withheld, conditioned or delayed), the Purchaser will not (i) amend or permit any of the Company or any of its Subsidiaries to amend any income Tax Return relating to a taxable period ending on or prior to the Closing Date or (ii) make or change any Tax election or accounting method with respect to, or that has retroactive effect to, any Pre-Closing Tax Period, in each case, unless otherwise required by applicable Law.

(e) Tax Refunds. Except to the extent reflected as an asset in the final calculation of Net Working Capital or attributable to a Tax attribute arising in a taxable period (or portion thereof) beginning after the Closing Date, the Sellers Representative (on behalf of the Sellers) shall be entitled to any Tax refunds of the Company or its Subsidiaries (net of any Taxes thereon and any expenses imposed with respect thereto) that are received by the Purchaser, the Company or any Subsidiary after the Closing Date and that relate to Pre-Closing Tax Periods. The Purchaser shall pay over to the Sellers Representative (on behalf of the Sellers) any such refund within fifteen (15) days after actual receipt of such refund against Taxes. All such Tax refund will be claimed in cash rather than as a credit against future Tax liabilities. If the amount of any such Tax refunds is subsequently determined by any Governmental Authority, in a final determination, to be less than the amount paid by the Purchaser pursuant to this Section 8.02(e), the Sellers Representative shall promptly pay to the Purchaser the amount of any such disallowed Tax refund (including any interest or penalties in respect of such disallowed amount owed to any Governmental Authority).

2.03 Further Assurances

. From time to time, as and when requested by any party hereto and at such party's expense, any other party shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other actions as such requesting party may reasonably deem necessary or desirable to evidence and effectuate the transactions contemplated by this Agreement.

2.04 Disclosure Generally

. All Disclosure Schedules attached hereto are incorporated herein and expressly made a part of this Agreement as though completely set forth herein.

2.05 Regulatory Filings; Consents

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(a) In furtherance and not in limitation of the foregoing, each of the Purchaser and the Company shall make (and Sellers shall cause the Company to make), as promptly as reasonably practicable (and in any event within ten (10) Business Days after the date of this Agreement) an appropriate filing of a Notification and Report Form pursuant to the HSR Act with respect to the transactions contemplated hereby. Each of the Sellers Representative, the Company and Purchaser shall use its commercially reasonable efforts to supply as promptly as reasonably practicable any additional information and documentary material that may be reasonably requested pursuant to the foregoing, and use its commercially reasonable efforts to take all other actions necessary to cause the expiration or termination of the applicable waiting periods regarding the foregoing as soon as reasonably practicable. The Purchaser shall pay all filing fees to be paid by the Purchaser and the Company pursuant to this Agreement under the HSR Act and under any such other Laws.

(b) Except as prohibited by applicable Law or Order, each of the Purchaser, the Sellers Representative and the Company shall use its commercially reasonable efforts to (i) cooperate in all respects with each other in connection with any filing or submission with a Governmental Authority in connection with the transactions contemplated hereby and in connection with any investigation or other inquiry by or before a Governmental Authority relating to the transactions contemplated hereby, (ii) promptly inform the other parties of (and, if in writing, supply to the other parties' legal counsel) any communication, other than any ministerial communications, received by such party from, or given by such party to, the Federal Trade Commission, the Antitrust Division of the Department of Justice, or any other similar Governmental Authority, in each case regarding any of the transactions contemplated hereby, (iii) consult with each other prior to taking any material position with respect to the filings under the HSR Act in discussions with or filings to be submitted to any Governmental Authority, (iv) permit the other parties' legal counsel to review and discuss in advance, and consider in good faith the views of the other parties in connection with, any analyses, presentations, memoranda, briefs, arguments, opinions and proposals to be submitted to any Governmental Authority with respect to filings under the HSR Act, and (v) coordinate with the other parties' legal counsel in preparing and exchanging such information and promptly provide the other parties' legal counsel with copies of all filings, presentations or submissions (and a summary of any oral presentations) made by such party with any Governmental Authority relating to this Agreement or the transactions contemplated hereby under the HSR Act, which may be redacted for confidential information. Notwithstanding anything to the contrary herein, Purchaser shall, on behalf of the parties, have control over and lead the strategy for obtaining any clearances required in connection with the transactions contemplated hereby and shall take the lead in all meetings and communications with any Governmental Authority in connection with obtaining such clearances and in any litigation under the HSR Act or any similar competition Law; provided, however, that Purchaser shall, to the extent reasonably practicable, consult in advance with the Sellers Representative and the Company and in good faith take the Sellers Representative's and the Company's views into account regarding the overall strategic direction of any such approval process, as applicable, and consult with the Company prior to taking any material substantive positions, making dispositive motions or other material substantive filings or submissions or entering into any negotiations concerning such approvals, as applicable. The parties shall take reasonable efforts to share information protected from disclosure under the attorney-client privilege, work product doctrine, joint defense privilege or any other privilege pursuant to this Section 8.05 in a manner so as to preserve the applicable privilege.

(c) Unless prohibited by applicable Law or Order or by the applicable Governmental Authority, each of the Sellers Representative and the Company, on one hand, and Purchaser, on the other hand, shall (i) to the extent reasonably practicable, not participate in or attend any meeting, or engage in any conversation (other than ministerial conversations) with any Governmental Authority in respect of the transactions contemplated hereby without the other, (ii) to the extent reasonably practicable, give the other reasonable prior notice of any such meeting or conversation and (iii) in the event one such party is prohibited by applicable Law or Order or by the applicable Governmental Authority from participating or attending any such meeting or engaging in any such conversation, or it has not been reasonably practicable to include the non-participating party, keep such non-participating party reasonably apprised with respect thereto.

(d) Nothing in this Agreement shall obligate the Purchaser or Parent (including any of their Subsidiaries or Affiliates) to (i) agree to limit in any manner whatsoever or not to exercise any rights of ownership of any securities (including the Units), or to divest, dispose of or hold separate any securities or all or a portion of their respective businesses, assets or properties or of the business, assets or properties of the Company or any Subsidiary of the Company; (ii) agree to limit in any manner whatsoever the ability of such entities (A) to conduct their respective businesses or own such assets or properties or to conduct the businesses or own the properties or assets of the Company and any Subsidiary of the Company, or (B) to control their respective businesses or operations or the businesses or operations of the Company and any Subsidiary of the Company; (iii) otherwise take or commit to take any other action that would limit the Purchaser's freedom of action with respect to, or its ability to retain or hold, directly or indirectly, any businesses, assets, equity interests, product lines or properties of the Purchaser or the Company (including any of their respective Subsidiaries), in each case to obtain all approvals, consents, clearances, expirations or terminations of waiting periods, registrations, permits, authorizations and other confirmations required directly or indirectly under the HSR Act or any similar competition Law or to avoid the commencement of any action to prohibit the transactions contemplated hereby under the HSR Act or any similar competition Law; or (iv) to contest and resist any such action or proceeding, or to avoid the entry of, or to effect the dissolution of, any injunction, temporary restraining order or other Order in any action or proceeding seeking to prohibit the transactions contemplated hereby or delay the Closing beyond the Termination Date, or to seek to have vacated, lifted, dissolved, reversed or overturned any decree, judgment, injunction or other Order, whether temporary, preliminary or permanent, that is in effect and that prohibits, prevents or restricts consummation of the transactions contemplated hereby.

(e) The Company shall give (or shall cause its Subsidiaries to give) any notices to third parties, and use, and cause its Subsidiaries to use, their commercially reasonable efforts to obtain any third party consents, including under any Contracts of the Company or its Subsidiaries, (i) necessary, proper or advisable to consummate the transactions contemplated by this Agreement or (ii) required to be disclosed in the Schedules, provided that the parties shall not be required to make any payments in connection with obtaining any such consents unless expressly required by the terms of a given Contract.

2.06 Escrow Agreement. Purchaser and the Sellers Representative shall execute and deliver to each other, and shall use commercially reasonable efforts to cause the Escrow Agent to execute and deliver, at the Closing, the Escrow Agreement in the form attached hereto as Exhibit C.

2.07 Restrictive Legend. Each Seller acknowledges that each certificate evidencing the Parent Shares shall bear the following restrictive legend, either as an endorsement or on the face thereof:

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE WERE ORIGINALLY ISSUED ON _____, HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR UNDER ANY STATE SECURITIES LAWS AND MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS OR AN EXEMPTION FROM REGISTRATION THEREUNDER."

2.08 Lockup. Without the prior written consent of Parent, each Seller covenants and agrees, for sixty (60) days following the Closing Date, not to offer, sell, contract to sell, pledge, assign, transfer or otherwise create any interest in or otherwise dispose of (or enter into any transaction which is designed to, or would reasonably be expected to, result in any of the foregoing) any of the Parent Shares acquired by such Seller pursuant to this Agreement. Without limitation of the foregoing, each Seller set forth on Schedule 8.08 covenants and agrees, until December 31, 2018, not to offer, sell, contract to sell, pledge, assign, transfer or otherwise create any interest in or otherwise dispose of (or enter into any transaction which is designed to, or would reasonably be expected to, result in any of the foregoing) the number of Parent Shares acquired by such Seller pursuant to this Agreement that is set forth opposite such Seller's name on Schedule 8.08.

ARTICLE III

DEFINITIONS

3.01 Definitions

. For purposes hereof, the following terms when used herein shall have the respective meanings set forth below:

"AAA" has the meaning set forth in Section 10.18.

"Accredited Investor" means an "accredited investor" as defined in Rule 501 of Regulation D under the Securities Act of 1933, as amended.

"Adjustment Calculation Time" means 11:59 p.m. Eastern time on the day immediately prior to the Closing Date.

"Affiliate" of any particular Person means any other Person controlling, controlled by or under common control with such particular Person, where "control" means the possession, directly or indirectly, of the power to direct the management and policies of a Person whether through the ownership of voting securities, contract or otherwise.

"Affiliated Group" means an affiliated group as defined in Section 1504 of the Code (or any analogous combined, consolidated or unitary group defined under state, local or foreign income Tax law) of which the Company or any or its Subsidiaries is or has been a member.

"Agreement" has the meaning set forth in the Preamble.

"Allocation Percentage" means with respect to each Seller, the product of (i) a fraction, the numerator of which is one, and the denominator of which is the sum of the number of Units issued and outstanding immediately prior to the Closing, multiplied by (ii) the number of Units owned by such Seller as of immediately prior to the Closing.

"Arbitrable Dispute" has the meaning set forth in Section 10.18.

"Arbitration Expenses" has the meaning set forth in Section 10.18(c).

"Arbitrator" has the meaning set forth in Section 10.18(b).

"Benefit Plans" has the meaning set forth in Section 3.13(a).

"Business" means the businesses of proppant storage, proppant handling and proppant well-site delivery for use in hydraulic fracturing.

"Business Day" means any day that is not a Saturday, a Sunday or other day on which the Federal Reserve Bank of New York is closed.

"Cash" or "Cash on Hand" means, as of the Adjustment Calculation Time, the sum of the fair market value of (i) all cash and (ii) all cash equivalents (including deposits, marketable securities and short term investments) of the Company and its Subsidiaries, each as determined in accordance with GAAP. Cash shall be (x) reduced by issued but uncleared checks and drafts of the Company and its Subsidiaries and (y) increased by checks and drafts deposited for the account of the Company and its Subsidiaries, whether or not cleared.

"Claim" means any civil, criminal or administrative action, claim, suit, petition, proceeding (including arbitration proceeding), charge, complaint, subpoena, civil investigative demand, investigation, demand, demand letter, warning letter, audit,

inquiry, notice of noncompliance or violation, or proceeding by or before any Governmental Authority or other Person.

"Closing" has the meaning set forth in Section 1.03.

"Closing Balance Sheet" has the meaning set forth in Section 1.05(b).

"Closing Date" has the meaning set forth in Section 1.03.

"Closing Transactions" has the meaning set forth in Section 1.04.

"Code" means the Internal Revenue Code of 1986, as amended from time to time.

"Company" has the meaning set forth in the Preamble.

"Company Fundamental Representations" has the meaning set forth in Section 8.01(a).

"Company Material Adverse Effect" means any change, effect, event, occurrence, state of facts or development that has been, or is reasonably likely to be, individually or in the aggregate, materially adverse to the assets, Business, financial condition, results of operations or prospects of the Company and its Subsidiaries taken as a whole; provided, however, that none of the following shall be deemed in themselves, either alone or in combination, to constitute, and none of the following shall be taken into account in determining whether there has been or will be, a Company Material Adverse Effect: any change, effect, event, occurrence, state of facts or development attributable to (i) the announcement of the transactions contemplated by this Agreement, including the loss of any customer of the Company or its Subsidiaries as a result of the identity of Purchaser or Parent; (ii) conditions affecting the industry in which the Company and its Subsidiaries participate (including proppant, sand logistics, logistics generally or hydraulic fracturing industries) that are not unique to the Company and its Subsidiaries as compared to other proppant delivery solution providers, the U.S. economy as a whole or the capital markets in general or the markets in which the Company and its Subsidiaries operate (except to the extent such change, effect, event, occurrence, state of facts or development disproportionately affects (relative to other participants in the industry in which the Company and its Subsidiaries operate) the Company); (iii) any reduction in the prices of oil or gas, (iv) compliance with the terms of, or the taking of any action required by, this Agreement; (v) any change in applicable Laws or the interpretation thereof; (vi) any change in GAAP; (vii) the commencement, continuation or escalation of a war, material armed hostilities or other material international or national calamity or act of terrorism directly or indirectly involving the United States of America; (viii) changes or effects that arise from any seasonal fluctuations in the Business in the ordinary course of business; and (ix) any court ruling with respect to the litigation matter set forth on Schedule 9.01(b) that is adverse to the Company.

"Confidential Information" means all information of a confidential or proprietary nature (whether or not specifically labeled or identified as "confidential"), in any form or medium, that relates to the business, products, services, research and development, relationships, Intellectual Property and goodwill of the Company, its Subsidiaries and/or their suppliers, distributors, customers, contractors, licensors, licensees and/or other material business relations, including without limitation: (i) internal business information (including historical and projected financial information and budgets and information relating to strategic and staffing plans and practices, business, training, marketing, promotional and sales plans and practices, cost, rate and pricing structures and accounting and business methods); (ii) identities of, requirements of and specific contractual arrangements with customers, strategic partners, suppliers, vendors, licensees, licensors or other material business relations and their confidential information; (iii) trade secrets, know-how, source code and methods of operation, techniques, formulae and systems relating to the Company's products or services and data, data bases, analyses, records, reports, manuals, documentation and models and relating thereto; (iv) inventions, innovations, improvements, developments and all similar or related information (whether or not patentable); and (v) acquisition plans, targets and strategies.

"Confidentiality Agreement" has the meaning set forth in Section 5.02(a).

"Contract" means any written or oral and legally binding contract, agreement, subcontract, lease, note, bond, mortgage, indenture, instrument, license, sublicense and purchase orders and any other legally binding agreement.

"D&O Indemnified Persons" has the meaning set forth in Section 6.03.

"Deductible" has the meaning set forth in Section 8.01(e)(i).

"Direct Claim" has the meaning set forth in Section 8.01(i).

"Direct Claim Notice" has the meaning set forth in Section 8.01(i).

"Discussion Period" has the meaning set forth in Section 8.01(i).

"Dispute Resolution Firm" has the meaning set forth in Section 1.05(b).

"Environmental Law" means all Laws, all Orders, and all contractual obligations in effect as of or prior to the Closing Date concerning pollution, protection of the environment, or public or worker health and safety.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time.

"ERISA Affiliate" means any Person under common control with the Company within the meaning of Section 414(b), (c), (m), or (o) of the Code and any U.S. Department of Treasury or Internal Revenue Service guidance issued thereunder.

"Escrow Agreement" means the Escrow Agreement to be dated as of the Closing Date by and among the Sellers Representative, the Purchaser and the Escrow Agent, substantially in the form as set forth on Exhibit C attached hereto.

"Estimated Cash on Hand" has the meaning set forth in Section 1.05(a).

"Estimated Cash Purchase Price" has the meaning set forth in Section 1.02.

"Estimated Indebtedness" has the meaning set forth in Section 1.05(a).

"Estimated Net Working Capital" has the meaning set forth in Section 1.05(a).

"Estimated Seller Transaction Expenses" has the meaning set forth in Section 1.05(a).

"Estoppel Certificates" has the meaning set forth in Section 2.01(l).

"Final Cash Purchase Price" has the meaning set forth in Section 1.05(b).

"Financial Statements" has the meaning set forth in Section 3.05(a).

"GAAP" means United States generally accepted accounting principles, as in effect from time to time, consistently applied

"Governmental Authority" means any federal, state, local, foreign or other governmental or administrative body, instrumentality, department or agency or any court, tribunal, administrative hearing body, arbitration panel (public or private), commission, or other similar dispute-resolving panel or body.

"Hazardous Substances" means any pollutant, contaminant, material, substance or waste defined or regulated as hazardous or toxic under, or for which standards of conduct or liability may be imposed pursuant to, Environmental Laws, including asbestos or asbestos-containing materials, pesticides, petroleum products or byproducts, polychlorinated biphenyls, lead, mold, radiation, noise and odor.

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"Improvements" means all buildings, structures, improvements, fixtures, building systems and equipment, and all components thereof included in the Real Property.

"Income Taxes" means any Tax which is based upon, measured by, or calculated with respect to net income or profits.

"Indebtedness" means, without duplication, with respect to the Company and its Subsidiaries as of the Adjustment Calculation Time, directly or indirectly, (i) any indebtedness, liability or obligation for borrowed money, whether current, short-term, long-term, secured or unsecured, (ii) any indebtedness, liability or obligation evidenced by any note, bond, debenture or other similar instrument or debt security, (iii) any liabilities or obligations for the deferred purchase price of property or services with respect to which the Company or any of its Subsidiaries is liable, contingently or otherwise, as obligor or otherwise (other than trade payables incurred in the ordinary course of business), (iv) any indebtedness guaranteed by the Company or any of its Subsidiaries, (v) any liabilities or obligations under capitalized leases with respect to which the Company or any of its Subsidiaries is liable, determined on a consolidated basis in accordance with GAAP, (vi) any indebtedness or liabilities secured by a Lien on the Company's or any of its Subsidiaries' assets, (vii) any liability or obligation in respect of letters of credit or bankers' acceptances issued for the account or benefit of the Company, (viii) all liabilities and obligations arising from bank overdrafts, (ix) any liabilities and obligations created or arising under any conditional sale or other title retention agreement with respect to acquired property, (x) any obligations under indentures or arising out of any swap, option, derivative, hedging or similar arrangement, (xi) any severance obligations with respect to officers or employees of the Company or any of its Subsidiaries whose employment was terminated prior to the Closing, (xii) deferred rent, (xiii) any customer prepayment or deposit amounts, (xiv) all liabilities and obligations arising from deferred compensation arrangements and the employer portion of payroll Taxes relating thereto, and (xv) all accrued interest, make-whole amounts, breakage fees, exit fees, prepayment premiums or the like or penalties related to any of the foregoing. For the avoidance of doubt, Indebtedness shall exclude any inter-company indebtedness among the Company and any of its Subsidiaries.

"Indemnitee" has the meaning set forth in Section 8.01(h).

"Indemnitor" has the meaning set forth in Section 8.01(h).

"Indemnity Escrow Account" means an account established by the Escrow Agent pursuant to the Escrow Agreement for purposes of indemnification payments owing by the Sellers pursuant to Section 8.01.

"Indemnity Escrow Amount" means an amount deposited at the Closing in the Indemnity Escrow Account with the Escrow Agent pursuant to the terms and conditions of the Escrow Agreement, which shall be $10,800,000.

"Indemnity Escrow Cap" has the meaning set forth in Section 8.01(e)(iii).

"Insurance Policies" has the meaning set forth in Section 3.14.

"Intellectual Property" means any and all intellectual property rights in any jurisdiction throughout the world, including: (i) trademarks and service marks, trade dress and trade names, corporate names, Internet domain names, social media identifications, logos, slogans, trade dress, design rights, and other similar designations of source or origin, (together with goodwill associated with any of the foregoing), (ii) inventions (whether or not patentable), patents, patent applications and all related continuations, continuations-in-part, divisionals, reissues, re-examinations, substitutions, and extensions of them, (iii) registered and unregistered copyrights and protected or protectable rights associated with works of authorship, (iv) proprietary and confidential information, including databases, data collections, trade secrets, algorithms, formulae, processes, techniques, technical data, and know-how, (v) software, systems, networks, and social media accounts (including log-in credentials and administrator rights), and (vi) all rights, registrations, and applications for and physical embodiment(s) or media associated with any of the foregoing.

"knowledge of the Company", "to the Company's knowledge" or other similar phrases means the actual knowledge of a particular fact or other matter of Joshua E. Oren, John R. Oren, Rick McCormick, Thomas Massalone, Peter Glynn and Merrill Cummings and, in each case, the knowledge such individual would reasonably be expected to have obtained of a particular fact or other matter in the course of carrying out the responsibilities and duties inherent to his or her position with the Company.

"knowledge of Purchaser", "to the Purchaser's knowledge" or other similar phrases means the actual knowledge of a particular fact or other matter of Bryan Shinn (President and Chief Executive Officer), Donald Merril (Vice President and Chief Financial Officer), Christine Marshall (General Counsel) and Bradford Casper (Vice President and Chief Commercial Officer) and, in each case, the knowledge such individual would reasonably be expected to have obtained of a particular fact or other matter in the course of carrying out the responsibilities and duties inherent to his or her position with the Purchaser.

"Latest Balance Sheet" has the meaning set forth in Section 3.05(a).

"Law" means any law, statute, constitution, ordinance, rule, regulation, judgment, injunction, Order, treaty, regulation, decree or other restriction of any Governmental Authority, including common law.

"Lease Consents" has the meaning set forth in Section 2.01(l).

"Leased Real Property" has the meaning set forth in Section 3.07(b).

"Liens" means liens, mortgages, pledges, hypothecations, community property interests, security agreements, easements, restrictions on transfer, security interests, charges or encumbrances of any kind or nature.

"Losses" has the meaning set forth in Section 8.01(b).

"Material Contracts" has the meaning set forth in Section 3.09(c).

"Mini-Basket" has the meaning set forth in Section 8.01(e)(i).

"Net Working Capital" means the amount by which (a) the sum of the current assets of the Company and its Subsidiaries, determined on a consolidated basis in accordance with GAAP applied on a basis consistent with the methodologies, practices, estimation techniques, assumptions and principles used in the preparation of the Financial Statements, exceeds (b) the sum of the current liabilities of the Company and its Subsidiaries determined on a consolidated basis in accordance with GAAP applied on a basis consistent with the methodologies, practices, estimation techniques, assumptions and principles used in the preparation of the Financial Statements; provided, however, that (i) the current assets of the Company and its Subsidiaries shall not include Cash on Hand, (ii) the current liabilities of the Company and its Subsidiaries shall not include Seller Transaction Expenses or any other liabilities that are included in, or relate to the liabilities included in, the definition of Indebtedness or otherwise reduce the amount of the Estimated Purchase Price or the Final Purchase Price, and (iii) the calculation of Net Working Capital shall not reflect or include any Income Tax assets or liabilities. For the avoidance of doubt, in calculating Net Working Capital for purposes of calculating the Final Cash Purchase Price, the Purchaser shall not add any litigation reserve for any existing litigation as a current liability to the Closing Balance Sheet unless otherwise agreed to by the Sellers Representative. A sample calculation of Net Working Capital, Estimated Cash Purchase Price and Closing flow of funds is attached, for purposes of illustration only, as Exhibit G.

"Non-Disturbance Agreements" has the meaning set forth in Section 2.01(l).

"Objections Statement" has the meaning set forth in Section 1.05(b).

"Order" means any judgment, ruling, order, decision, writ, injunction, determination, ruling or decree of, or any settlement under the jurisdiction of, any Governmental Authority.

"Owned Real Property" means all land, together with all buildings, structures, improvements and fixtures located thereon, including, without limitation, all electrical, mechanical, plumbing and other building systems; fire protection, security and surveillance systems; telecommunications, computer, wiring and cable installations; utility installations; water distribution systems; and landscaping, and all easements and other rights and interests appurtenant thereto, including, without limitation, air, oil, gas, mineral and water rights, owned by the Company or any of its Subsidiaries.

"Parent" has the meaning set forth in the Preamble.

"Parent Common Stock" means the common stock, par value $0.01, of the Parent.

"Parent Preferred Stock" means the Preferred Stock of Parent, par value $0.01 per share.

"Parent Shares" means shares of Parent Common Stock issued by the Parent pursuant to the terms and conditions of this Agreement.

"Permits" means any approval, bond, certificate of authority, operating certificate, certificate of need, accreditation, qualification, license, franchise, permit, order, registration, variance, consent, certificate or other similar authorization issued by, or otherwise granted by, any Governmental Authority or any other Person to which or by which such person is subject or bound or to which or by which any property, business, operation or right of such Person is subject or bound.

"Permitted Liens" means (i) statutory liens for current Taxes or other governmental charges not yet due and payable or the amount or validity of which is being contested in good faith by appropriate proceedings by the Company and its Subsidiaries and for which appropriate reserves have been established in accordance with GAAP; (ii) mechanics', carriers', workers', repairers' and similar statutory liens arising or incurred in the ordinary course of business for amounts which are not yet due and payable and which are not, individually or in the aggregate, significant; (iii) zoning, building and other land use regulations imposed by governmental agencies having jurisdiction over the Leased Real Property which are not violated by the current use and operation of the Leased Real Property or operation of the Business thereon; (iv) covenants, conditions, restrictions, easements and other similar matters of record affecting title to the Leased Real Property which do not materially impair the occupancy or use of the Leased Real Property for the purposes for which it is currently used or proposed to be used in connection with the Business; (v) liens on goods in transit incurred pursuant to documentary letters of credit; (vi) liens securing rental payments under capital lease arrangements; (vii) purchase money liens entered into in the ordinary course of business for amounts that are not overdue; and (viii) Liens set forth on Schedule 9.01(a).

"Person" means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization or a governmental entity or any department, agency or political subdivision thereof.

"Plan" has the meaning set forth in Section 3.08(k).

"Pre-Closing Tax Period" means all taxable periods ending on or before the Closing Date, and the portion of the Straddle Period ending at the end of the Closing Date.

"Preliminary Closing Statement" has the meaning set forth in Section 1.05(b).

"Purchase Price Allocation" has the meaning set forth in Section 1.08.

"Purchaser" has the meaning set forth in the Preamble.

"Purchaser Fundamental Representations" has the meaning set forth in Section 8.01(a).

"Purchaser Indemnified Parties" has the meaning set forth in Section 8.01(b).

"Purchaser Material Adverse Effect" means any change, effect, event, occurrence, state of facts or development that has been, or is reasonably likely to be, individually or in the aggregate, materially adverse to the assets, business, financial condition or results of operations of the Purchaser and its Subsidiaries, taken as a whole, including any material non-public information relating to Parent (other than with respect to Parent's financial and operating results for the quarterly period ended June 30, 2016) and known to Parent prior to the Closing that a reasonable Person would consider material to an investment decision with respect to Parent Common Stock as of the Closing; provided, however, that none of the following shall be deemed in themselves, either alone or in combination, to constitute, and none of the following shall be taken into account in determining whether there has been or will be, a Purchaser Material Adverse Effect: any change, effect, event, occurrence, state of facts or development attributable to (i) the announcement of the transactions contemplated by this Agreement; (ii) conditions affecting the industry in which the Purchaser and its Subsidiaries participate that are not unique to the Purchaser and its Subsidiaries, the U.S. economy as a

whole or the capital markets in general or the markets in which the Purchaser and its Subsidiaries operate (except to the extent such change, effect, event, occurrence, state of facts or development disproportionately affects (relative to other participants in the industry in which the Purchaser and its Subsidiaries operate) the Purchaser); (iii) compliance with the terms of, or the taking of any action required by, this Agreement; (iv) any change in applicable Laws or the interpretation thereof; (v) any change in GAAP; (vi) the commencement, continuation or escalation of a war, material armed hostilities or other material international or national calamity or act of terrorism directly or indirectly involving the United States of America; and (vii) changes or effects that arise from any seasonal fluctuations in the Purchaser's business in the ordinary course of business.

"Real Property" means, collectively, the Owned Real Property and the Leased Real Property.

"Real Property Permits" has the meaning set forth in Section 3.07(g).

"Representative" means, with respect to any Person, any Affiliate, director, officer, manager, partner or employee of such Person, or any financial advisor, accountant, legal counsel, consultant or other authorized agent or representative retained by such Person.

"Restricted Sellers" means each of John Oren, Joshua Oren, Merril Cummings, Peter Glynn and Thomas Massalone.

"Restricted Territories" has the meaning set forth in Section 5.03(a).

"Restrictive Covenants" has the meaning set forth in Section 5.03(e).

"Schedule" or "Disclosure Schedules" has the meaning set forth in Article III.

"Seller" or "Sellers" has the meaning set forth in the Preamble.

"Seller Fundamental Representations" has the meaning set forth in Section 8.01(a).

"Seller Indemnified Parties" has the meaning set forth in Section 8.01(d).

"Seller Released Party" has the meaning set forth in Section 10.22.

"Seller Releasing Party" has the meaning set forth in Section 10.22.

"Seller Transaction Expenses" means the aggregate costs, fees and expenses incurred (whether or not billed or invoiced) by or on behalf of the Company or its Subsidiaries relating to the transactions contemplated hereby, including (i) the aggregate amount of fees and expenses payable to advisors and consultants (including investment bankers, lawyers and accountants) arising out of, relating to or incidental to the discussion, evaluation, negotiation and documentation of the transactions contemplated hereby or the related repayment of any Indebtedness (including Simmons & Company International, a division of Piper Jaffray & Co. for investment banking services for the Company and BoyarMiller for legal services to the Company) and (ii) the aggregate amount of any bonus or other similar payment (including any retention, change in control, "stay" or "sale" bonus) paid or payable to any director, manager, officer or employee or other Affiliate of the Company or its Subsidiaries as a result of the transactions contemplated by this Agreement, including the employer's share of Taxes attributable to any such bonuses or other payments, in each case to the extent unpaid as of the Adjustment Calculation Time; provided that, prior to the Closing, the Company or any of its Subsidiaries is obligated or has agreed to pay such bonus or similar payment.

"Sellers Representative" has the meaning set forth in the Preamble.

"Sellers Representative Agreement" has the meaning set forth in Section 1.06(a).

"Significant Customers" has the meaning set forth in Section 3.19.

"Stock Consideration" means 4,195,180 Parent Shares.

"Straddle Period" means a tax period that includes, but does not end on, the Closing Date.

"Subsidiary" means, with respect to any Person, any corporation of which a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person or a combination thereof, or any partnership, limited liability company, association or other business entity of which a majority of the partnership or other similar ownership interest is at the time owned or controlled, directly or indirectly, by such Person or one or more Subsidiaries of such Person or a combination thereof. For purposes of this definition, a Person is deemed to have a majority ownership interest in a partnership, limited liability company, association or other business entity if such Person is allocated a majority of the gains or losses of such partnership, association or other business entity or is or controls the managing director or general partner of such partnership, association or other business entity.

"Target Working Capital" means $8,200,000.

"Tax" or "Taxes" means all taxes, including any federal, state, local or foreign income, gross receipts, franchise, alternative minimum, add-on minimum, sales, use, transfer, real property gains, registration, value added, excise, natural resources, severance, stamp, occupation, premium, windfall profit, environmental, customs, duties, real property, special assessment, personal property, capital stock, social security, unemployment, disability, payroll, license, escheat, employee, withholding tax or other tax of any kind whatsoever, and any similar assessments by a Governmental Authority, whether disputed or not, including any interest, penalties or additions to tax or additional amounts in respect of the foregoing, and including any obligations to indemnify or otherwise assume or succeed to the tax liability of any other Person.

"Tax Returns" means any return, report, information return or other document (including schedules or any related or supporting information) filed or required to be filed with any governmental entity or other authority in connection with the determination, assessment or collection of any Tax or the administration of any laws, regulations or administrative requirements relating to any Tax, including any amendment thereof.

"Termination Date" has the meaning set forth in Section 7.01(d).

"Transfer Taxes" has the meaning set forth in Section 8.02(c).

"Units" means the units of membership interest of the Company issued and outstanding as of the Closing Date.

"WARN" has the meaning set forth in Section 3.18(b).

"Willful Breach" means a material breach that is a consequence of an act or failure to act with the actual knowledge that the taking of the act or failure to act would, or would reasonably be expected to, result in a material breach.

"Working Capital Escrow Account" means an account established by the Escrow Agent pursuant to the Escrow Agreement.

"Working Capital Escrow Amount" means an amount deposited at the Closing in the Working Capital Escrow Account with the Escrow Agent pursuant to the terms and conditions of the Escrow Agreement, which shall be $2,500,000.

3.02 Other Definitional Provisions.

(a) Accounting Terms. Accounting terms which are not otherwise defined in this Agreement have the meanings given to them under GAAP. To the extent that the definition of an accounting term defined in this Agreement is inconsistent with the meaning of such term under GAAP, the definition set forth in this Agreement will control.

(b) Successor Laws. Any reference to any particular Code section or any other law or regulation will be interpreted to include any revision of or successor to that section regardless of how it is numbered or classified.

ARTICLE IV

MISCELLANEOUS

4.01 Press Releases and Communications

. The initial press release announcing this Agreement, any ancillary agreements and the transactions contemplated herein shall be in substantially the form mutually agreed upon by the Sellers Representative and the Purchaser. No other press release, public announcement or public filing related to this Agreement or the transactions contemplated herein, or prior to the Closing any other announcement or communication to the employees, customers or suppliers of the Company or its Subsidiaries, shall be issued or made by any party hereto without the joint approval of the Purchaser and the Sellers Representative (which approval shall not be unreasonably withheld, delayed or conditioned), unless required by Law or stock exchange rules; provided that no party shall be required to obtain approval or provide materials for review to the extent that the applicable press release, announcement, public filing or communication consists of information that has previously been made public without breach of the obligations under this Section 10.01. In the event that any such additional press release, public announcement or public filing is required by or advisable under applicable Law or stock exchange rules, the party obligated to make such press release, public announcement or public filing shall use commercially reasonably efforts to provide the other party with reasonable advance notice of such requirement and the content of the proposed press release, announcement or filing and a reasonable opportunity to review and comment on such release, announcement or filing and consider in good faith any comments with respect thereto. The parties understand and agree that Purchaser or its Affiliates (including Parent) intend to publicly disclose the existence and terms of this Agreement and the transactions contemplated hereby subsequent to the execution of this Agreement.

4.02 Expenses

. Except as otherwise expressly provided herein, each of Sellers, the Company, the Purchaser and Parent shall pay all of their own respective fees, costs and expenses (including fees, costs and expenses of legal counsel, investment bankers, brokers and other representatives and consultants) incurred in connection with the negotiation of this Agreement, the performance of its

obligations hereunder and the consummation of the transactions contemplated hereby; provided, however, that if the transactions contemplated hereby are consummated, Sellers shall bear all fees, costs and expenses of the Company and its Subsidiaries incurred in connection with the negotiation of this Agreement, the performance of their obligations hereunder and the consummation of the transactions contemplated hereby (including legal and accounting fees, costs and expenses) by virtue of the inclusion of all such fees and costs as Seller Transaction Expenses.

4.03 Notices

. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given (a) when personally delivered, (b) when transmitted via electronic mail to the e-mail address set out below if the sender on the same day sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid), (c) the day following the day (except if not a business day then the next business day) on which the same has been delivered prepaid to a reputable national overnight air courier service or (d) the third (3rd) Business Day following the day on which the same is sent by certified or registered mail, postage prepaid. Notices, demands and communications, in each case to the respective parties, shall be sent to the applicable address set forth below, unless another address has been previously specified in writing:

Notices to the Purchaser (and, after the Closing, the Company)

U.S. Silica Company
8490 Progress Drive, Suite 300
Frederick, Maryland 21701
Attention: Christine Marshall, General Counsel and Corporate Secretary
Telephone No.: (301) 682-0313
Email: marshall@ussilica.com

with a copy to:

Kirkland & Ellis LLP
300 North LaSalle Street
Chicago, Illinois 60654
Attention: Robert M. Hayward, P.C.
Bradley Reed
Telephone No.: (312) 862-2000
Email: robert.hayward@kirkland.com
bradley.reed@kirkland.com

Notices to the Sellers and Sellers Representative (and prior to Closing, the Company):

Sandy Creek Capital, LLC
18515 Aldine Westfield
Houston, Texas 77073
Attention: Joshua Oren
Email: jeoren@sandboxlogistics.com

with a copy to:

BoyarMiller
2925 Richmond Ave., 14th Floor
Houston, Texas 77098
Attention: Steven D. Kesten
Telephone No: (832) 615-4246
Email: skesten@boyarmiller.com

4.04 Assignment

. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, except that neither this Agreement nor any of the rights, interests or obligations hereunder may be assigned or delegated by either the Purchaser or Parent, on the one hand, and the Company, the Sellers or the Sellers Representative, on the other hand, without the prior written consent of the other party; provided that Purchaser and Parent may, without the consent of any Person, assign in whole or in part their rights, interests and obligations pursuant to this Agreement to (i) one or more of its Affiliates, (ii) after the Closing, any purchaser of all or any portion of the assets of Purchaser and/or Parent or (iii) any of their lender(s) as collateral security; provided that, in the case of clauses (i) and (iii), such assignment

shall not relieve Purchaser or Parent of any of its obligations hereunder unless the Company and Sellers Representative consent in writing to such assignment.

4.05 Severability

. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable Law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

4.06 References

. Capitalized terms used herein shall have the respective meanings assigned thereto herein (such definitions to be equally applicable to both the singular and plural forms and to the masculine as well as to the feminine and neuter genders of the terms defined). A term defined as one part of speech (such as a noun) shall have a corresponding meaning when used as another part of speech (such as a verb). All terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein. The table of contents and the section and other headings and subheadings contained in this Agreement and the exhibits hereto are solely for the purpose of reference, are not part of the agreement of the parties hereto, and shall not in any way affect the meaning or interpretation of this Agreement or any exhibit hereto. All references to days or months shall be deemed references to calendar days or months. All references to "$" shall be deemed references to United States dollars. Unless the context otherwise requires, any reference to a "Section," "Exhibit," "Disclosure Schedule" or "Schedule" shall be deemed to refer to a section of this Agreement, exhibit to this Agreement or a schedule to this Agreement, as applicable. The words "hereof," "herein" and "hereunder" and words of similar import referring to this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. English shall be the governing language of this Agreement. The word "including" shall mean "including, without limitation". "Shall" and "will" mean "must," and shall and will have equal force and effect and express an obligation. "Writing," "written" and comparable terms refer to printing, typing, and other means of reproducing in a visible form. References herein to this Agreement mean this Agreement as from time to time amended, modified or supplemented, including by waiver or consent. Any agreement or instrument defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement or instrument as from time to time amended, modified or supplemented, including by waiver or consent.

4.07 Construction

. The language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any Person. The specification of any dollar amount or the inclusion of any item in the representations and warranties contained in this Agreement or the Disclosure Schedules or Exhibits attached hereto is not intended to imply that the amounts, or higher or lower amounts, or the items so included, or other items, are or are not required to be disclosed (including, without limitation, whether such amounts or items are required to be disclosed as material or threatened) or are within or outside of the ordinary course of business, and no party shall use the fact of the setting of the amounts or the fact of the inclusion of any item in this Agreement or the Disclosure Schedules or Exhibits in any dispute or controversy between the parties as to whether any obligation, item or matter not described or included in this Agreement or in any Schedule or Exhibit is or is not required to be disclosed (including whether the amount or items are required to be disclosed as material or threatened) or is within or outside of the ordinary of business for purposes of this Agreement. The information contained in this Agreement and in the Disclosure Schedules and Exhibits hereto is disclosed solely for purposes of this Agreement, and no information contained herein or therein shall be deemed to be an admission by any party hereto to any third party of any matter whatsoever (including, without limitation, any violation of law or breach of contract).

4.08 Amendment and Waiver

. This Agreement may be amended, and any provision of this Agreement may be waived; provided, that any such amendment or waiver shall be binding upon each Seller only if such amendment or waiver is set forth in a writing executed by Sellers Representative, and any such amendment or waiver shall be binding upon the Company, the Purchaser and Parent only if such amendment or waiver is set forth in a writing executed by the Company, the Purchaser or Parent, as the case may be. No waiver of any provision hereunder or any breach or default thereof shall extend to or affect in any way any other provision or prior or subsequent breach or default.

4.09 Complete Agreement

. This Agreement and the documents referred to herein (including the Escrow Agreement and the Confidentiality Agreement) contain the complete agreement between the parties hereto and supersede any prior understandings, agreements or representations by or between the parties, written or oral, which may have related to the subject matter hereof in any way.

4.10 Third-Party Beneficiaries

. Except as otherwise expressly provided herein, nothing expressed or referred to in this Agreement will be construed to give any Person other than the parties to this Agreement any legal or equitable right, remedy, or claim under or with

respect to this Agreement or any provision of this Agreement.

4.11 Waiver of Trial by Jury

. THE PARTIES HERETO WAIVE ANY RIGHT, TO THE FULLEST EXTENT PERMITTED BY LAW, TO A TRIAL BY JURY IN ANY ACTION, CLAIM OR PROCEEDING (I) ARISING UNDER THIS AGREEMENT OR (II) ARISING OUT OF THE TRANSACTIONS CONTEMPLATED HEREBY, REGARDLESS OF WHICH PARTY INITIATES SUCH ACTION OR PROCEEDING.

4.12 Purchaser Deliveries

. The Purchaser agrees and acknowledges that all documents or other items delivered or made available to the Purchaser or Purchaser's legal counsel in the online data room titled "Rubiks" hosted on RR Donnelley at https://wwwna2.rrdvenue.com at least two (2) Business Days prior to the date of this Agreement shall be deemed to be delivered or made available, as the case may be, to the Purchaser for all purposes hereunder.

4.13 Specific Performance

. Each of the Company, the Sellers, the Purchaser and Parent acknowledges and agrees that the other parties would be damaged irreparably in the event any provision of this Agreement is not performed in accordance with its specific terms or is otherwise breached. Accordingly, each of the Company, the Sellers, the Purchaser and Parent agrees that the other parties shall be entitled to seek an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof in any action instituted in any court in the United States or in any state having jurisdiction over the parties and the matter in addition to any other remedy to which they may be entitled pursuant hereto. If the Closing shall not have occurred because of a breach by the Purchaser or Parent of its obligations under this Agreement, and all of the conditions set forth in Section 2.01 to the Purchaser's and Parent's obligations have either been satisfied or previously waived in writing (or would have been satisfied or are capable of being satisfied but for such breach of the Purchaser's or Parent's obligations under this Agreement), then either the Sellers Representative or the Company shall have the right to a court order specifically enforcing the provisions of this Agreement as to which such breach applies and, in any event, to specifically force the Closing to occur. If the Closing shall not have occurred because of a breach by the Company or Sellers of their obligations under this Agreement, and all of the conditions set forth in Section 2.02 to the Company's and Sellers' obligations have either been satisfied or previously waived in writing (or would have been satisfied or are capable of being satisfied but for such breach of the Company's or Sellers' obligations under this Agreement), then the Purchaser and Parent shall have the right to a court order specifically enforcing the provisions of this Agreement as to which such breach applies and, in any event, to specifically force the Closing to occur.

4.14 Delivery

. This Agreement and any signed agreement entered into in connection herewith or contemplated hereby, and any amendments hereto or thereto, to the extent signed and delivered by means of a facsimile machine or electronic mail, shall be treated in all manner and respects as an original contract and shall be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person. At the request of any party hereto or to any such contract, each other party hereto or thereto shall re-execute original forms thereof and deliver them to all other parties. No party hereto or to any such contract shall raise the use of a facsimile machine or electronic mail to deliver a signature or the fact that any signature or contract was transmitted or communicated through the use of facsimile machine or in electronic or digital form as a defense to the formation of a contract and each such party forever waives any such defense.

4.15 Counterparts

. This Agreement may be executed in multiple counterparts, any one of which need not contain the signature of more than one party, but all such counterparts taken together shall constitute one and the same instrument.

4.16 Governing Law

. All Claims, issues and questions concerning the construction, validity, interpretation and enforceability of this Agreement and the exhibits and schedules hereto (whether in contract or tort) that may be based upon, arise out of or relate to this Agreement or the negotiation, execution or performance of this Agreement (including any Claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement) or the transactions contemplated hereby, shall be governed by, and construed in accordance with, the laws of the State of Delaware applicable to agreements executed and performed entirely within such State, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware.

4.17 Consent to Jurisdiction

. SUBJECT TO THE PROVISIONS OF SECTION 1.05 (WHICH SHALL GOVERN ANY DISPUTE ARISING THEREUNDER) AND SECTION 10.18 (WHICH SHALL GOVERN ANY DISPUTE NOT SEEKING INJUNCTIVE RELIEF), THE PARTIES AGREE THAT JURISDICTION AND VENUE IN ANY SUIT, ACTION, OR PROCEEDING BROUGHT BY ANY PARTY IN CONNECTION WITH THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREBY, OR THE PERFORMANCE OF THE OBLIGATIONS IMPOSED HEREUNDER SHALL PROPERLY AND EXCLUSIVELY LIE IN ANY FEDERAL OR STATE COURT LOCATED IN DELAWARE. EACH PARTY ALSO AGREES NOT TO BRING ANY SUIT, ACTION, OR PROCEEDING IN CONNECTION WITH THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREBY, OR THE PERFORMANCE OF THE OBLIGATIONS IMPOSED HEREUNDER IN ANY OTHER COURT. BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH PARTY IRREVOCABLY SUBMITS TO THE JURISDICTION OF SUCH COURTS FOR ITSELF AND IN RESPECT OF ITS PROPERTY WITH RESPECT TO ANY SUCH SUIT, ACTION, OR PROCEEDING. THE PARTIES IRREVOCABLY AGREE THAT VENUE WOULD BE PROPER IN SUCH COURT, AND HEREBY WAIVE ANY OBJECTION THAT ANY SUCH COURT IS AN IMPROPER OR INCONVENIENT FORUM FOR THE RESOLUTION OF SUCH SUIT, ACTION, OR PROCEEDING. THE PARTIES FURTHER AGREE THAT THE MAILING BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, OF ANY PROCESS REQUIRED BY ANY SUCH COURT SHALL CONSTITUTE VALID AND LAWFUL SERVICE OF PROCESS AGAINST THEM, WITHOUT NECESSITY FOR SERVICE BY ANY OTHER MEANS PROVIDED BY STATUTE OR RULE OF COURT.

4.18 Arbitration

. Except for disputes, controversies, or claims arising under Section 1.05 (which shall be resolved in accordance with the dispute resolution provisions set forth therein) and for other claims seeking injunctive relief (for which the provisions of Section 10.11 and Section 10.17 shall be applicable), any dispute, controversy, or claim arising under or relating to this Agreement or the Escrow Agreement or any breach or alleged breach thereof ("Arbitrable Dispute") shall be resolved by final and binding arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules, subject to (and as modified by) the following:

(a) Any Indemnitee or Indemnitor may demand that any Arbitrable Dispute be submitted to binding arbitration. The demand for arbitration shall be in writing, shall be served on the Indemnitee or Indemnitor in the manner prescribed herein for the giving of notices, and shall set forth a short statement of the factual basis for the claim, specifying the matter or matters to be arbitrated.

(b) The arbitration shall be conducted by an AAA arbitrator with at least ten (10) years of mergers and acquisitions experience (the "Arbitrator"), who shall be mutually selected by Purchaser and the Sellers Representative; provided that if Purchaser and the Sellers Representative are unable to agree on the Arbitrator, each of Purchaser and the Sellers Representative shall select an arbitrator and such arbitrators shall mutually select the Arbitrator. Any arbitration pursuant hereto shall be conducted by the Arbitrator under the guidance of the Federal Rules of Civil Procedure and the Federal Rules of Evidence, but the Arbitrator shall not be required to comply strictly with such Rules in conducting any such arbitration. All such arbitration proceedings shall take place in Wilmington, Delaware.

(c) Except as provided herein (including pursuant to Section 8.01 to the extent such items constitute Losses): (a) subject to Section 10.19, each of the Indemnitee and Indemnitor shall bear its own costs and fees, (b) the fees and expenses of the Arbitrator and all other costs and expenses incurred in connection with the arbitration ("Arbitration Expenses") shall be borne by the non-prevailing party in the arbitration, as determined by the Arbitrator and (c) notwithstanding the foregoing, the Arbitrator shall be empowered to require any one or more of the parties to the arbitration to bear all or any portion of such other party's costs and fees and/or the fees and expenses of the Arbitrator in the event that the Arbitrator determines such party has acted unreasonably or in bad faith.

(d) Unless the parties to such arbitration otherwise agree in writing, the arbitration shall be conducted on an expedited basis, testimony and briefing will be concluded no later than one hundred and twenty (120) days after the arbitration is initiated, each party shall be entitled to take at least one (1) deposition, the award shall be made in writing no more than thirty (30) days following the end of the proceeding, and all facts and circumstances relating to such arbitration, including the existence of the dispute and the ultimate resolution, shall be kept confidential in accordance with a confidentiality agreement containing customary terms to be agreed to by the parties to such arbitration.

(e) The Arbitrator shall have the authority to award any remedy or relief that a court of the State of Delaware could order or grant, including specific performance of any obligation created under this Agreement and/or the Escrow Agreement, the awarding of Losses, the issuance of an injunction, or the imposition of sanctions for abuse or frustration of the arbitration process. The Arbitrator's decision and award shall be in writing and counterpart copies thereof shall be delivered to each of the Indemnitee and Indemnitor. The decision and award of the Arbitrator shall be final and binding. In rendering such decision and award, the Arbitrator shall not add to, subtract from or otherwise modify the provisions of this Agreement and/or the Escrow Agreement and shall make its determinations in accordance therewith. Any party to the arbitration may, notwithstanding anything to the contrary set forth in Section 10.11, seek to have judgment upon the award rendered by the Arbitrator entered in any court having jurisdiction thereof.

(f) Each Party shall be limited to (i) not more than fifty (50) requests for production, (ii) not more than twenty-five (25) interrogatories; and/or (iii) depositions, limited to six (6) hours on the record per witness, and limited to the following: a corporate representative(s), any designated expert, and not more than two (2) fact witnesses. Leave must be sought from the Arbitrator before conducting any additional discovery, including any third-party discovery.

(g) The Arbitrator does not have authority (i) to render a decision which contains a reversible error of state or federal law, or (ii) to apply a cause of action or remedy not expressly provided for under existing state or federal law. Either Party may appeal an award rendered by the arbitrators in violation of (i) or (ii) by filing an appeal with the proper court having jurisdiction over the matter within thirty (30) days of the date upon which such final decision was rendered.

(h) The parties agree that it is their intention that all Arbitrable Disputes be governed by this Section 10.18 and agree to cause any of their Affiliates to observe the provisions of this Section 10.18.

4.19 Prevailing Party

. If there shall occur any dispute or proceeding between the parties relating to this Agreement or the transactions contemplated hereby, the non-prevailing party shall pay all reasonable costs and fees (including reasonable attorneys' fees and expenses) of the prevailing party and the prevailing party's share of the Arbitrator's and administrative fees paid in connection with the arbitration proceeding, if applicable.

4.20 Payments under this Agreement. Each party agrees that all amounts required to be paid hereunder shall be paid in United States currency and, except as otherwise expressly set forth in this Agreement, without discount, rebate, reduction or withholding and not subject counterclaim or offset, on the dates required hereby (with time being of the essence).

4.21 Non-Recourse. This Agreement may only be enforced against, and any Claim based upon, arising out of, or related to this Agreement or the transactions contemplated hereby may only be brought against, the Persons that are expressly named as parties hereto and then only with respect to the specific obligations set forth herein with respect to such party. Except to the extent a named party to this Agreement (and then only to the extent of the specific obligations undertaken by such named party in this Agreement and not otherwise), no past, present or future director, officer, employee, incorporator, member, partner, stockholder, Affiliate, agent, attorney, advisor or Representative or Affiliate of any of the foregoing shall have any liability (whether in contract, tort, equity or otherwise) for any one or more of the representations, warranties, covenants, agreements or other obligations or liabilities of any one or more of the Company, the Sellers, the Purchaser or Parent under this Agreement of or for any Claim based on, arising out of, or related to this Agreement or the transactions contemplated hereby.

4.22 Release. Notwithstanding anything to the contrary herein, effective as of the Closing Date, each Seller, on behalf of itself, himself or herself and such Seller's Affiliates (other than, for the avoidance of doubt, the Company and its Subsidiaries), hereby irrevocably waives any and all Claims and right to recourse against the Company and its Subsidiaries or any of their respective directors, officers, managers or employees with respect to any misrepresentation or breach of any representation, warranty or indemnity, or noncompliance with any conditions, covenants or agreements, given or made about or with respect to the Company or any of its Subsidiaries in this Agreement and any agreement and/or certificate delivered pursuant hereto. None of the Sellers or any of their Affiliates shall be entitled, directly or indirectly, to contribution from, subrogation to or recovery against the Company or any of its Subsidiaries (or the Purchaser, Parent or any of their Subsidiaries or Affiliates from and after the Closing) with respect to any liability of any Seller or any Seller's Affiliates that may arise under or pursuant to this Agreement or any agreement and/or certificate delivered pursuant hereto. In consideration of this Agreement, each Seller, on behalf of itself, himself or herself and such Seller's Affiliates (other than, for the avoidance of doubt, the Company and its Subsidiaries), executors, heirs, legal representatives, successors (whether pursuant to testamentary disposition, the laws of descent and distribution or otherwise) and permitted assigns (any of the foregoing, a "Seller Releasing Party") hereby releases and forever discharges, effective as of the Closing Date, the Company, the Purchaser and Parent, each of their respective Subsidiaries, and each of their respective officers, managers, directors, employees and Representatives (each, a "Seller Released Party") from any and all Claims, liabilities or obligations of any nature (whether known or unknown, suspected or unsuspected, absolute or contingent, liquidated or unliquidated, due or to become due, accrued, fixed or otherwise) which have been or could have been or could be asserted against any Seller Released Party, which such Seller Releasing Party has or ever had or may have, arising out of or in any way relating to events, circumstances, actions or omissions, occurring, existing or taken prior to or as of the Closing Date with respect to matters relating to the Company or its Subsidiaries; provided, however, that the parties acknowledge and agree that this Section 10.22 does not apply to and shall not constitute a release of (a) any rights or obligations arising under this Agreement, (b) any rights or obligations arising under or related to the ownership of the Parent Shares, (c) if any Seller is an employee of the Company or any of its Subsidiaries, rights under any Benefit Plan (other than as it relates to the provision of equity or equity-based compensation or other forms of incentive or deferred compensation) or rights to earned but unpaid wages or compensation, unpaid vacation and unreimbursed business expenses (d) rights to indemnification under any of the organizational documents of the Company or any of its Subsidiaries, (e) rights to insurance coverage for claims against a Seller in his or her capacity as an officer, employee or manager of the Company arising prior to the Closing under policies held by the Company that would cover such claims, (f) any claims that cannot be released as a matter of law, and (g) rights of any Seller under the Mezzanine Note (as defined in the Disclosure Schedules) until repaid in full at the Closing in accordance with Sections 1.04(c) and 1.04(d).

* * * *

IN WITNESS WHEREOF, the parties hereto have executed this Membership Unit Purchase Agreement as of the day and year first above written.

Company:	SANDBOX ENTERPRISES, LLC By: /s/ Josh Oren Its: President/CEO
Purchaser:	U.S. SILICA COMPANY By: /s/ Bryan A. Shinn Its: President and Chief Executive Officer
Parent:	U.S. SILICA HOLDINGS, INC. By: /s/ Bryan A. Shinn Its: President and Chief Executive Officer
Sellers:	[RESPECTIVE SELLER SIGNATURE PAGES FOLLOW]
Sellers Representative:	SANDY CREEK CAPITAL, LLC By: /s/ Josh Oren Its: Manager

SELLER SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Membership Unit Purchase Agreement as of the day and year first above written.

FOR ENTITY SELLERS: **FOR INDIVIDUAL SELLERS**:

/s/ Arnold A. Vickery

(Print Company Name) (Your Signature)

By:_____ Arnold Anderson Vickery

(Your Signature) (Your Printed Name)

Name:_____

(Your Printed Name)

Title:_____

(Your Title in the Company)

SELLER SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Membership Unit Purchase Agreement as of the day and year first above written.

FOR ENTITY SELLERS: **FOR INDIVIDUAL SELLERS**:

TPEnergy Capital _____
(Print Company Name) (Your Signature)

By:/s/ David Ducote _____
(Your Signature) (Your Printed Name)

Name: David Ducote _____
(Your Printed Name)

Title: Managing Member ____
(Your Title in the Company)

SELLER SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Membership Unit Purchase Agreement as of the day and year first above written.

FOR ENTITY SELLERS: **FOR INDIVIDUAL SELLERS**:

/s/ Cecile Coneway _____
(Print Company Name) (Your Signature)

By:_____ Cecile Coneway _____
(Your Signature) (Your Printed Name)

Name:_____
(Your Printed Name)

Title:_____
(Your Title in the Company)

SELLER SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Membership Unit Purchase Agreement as of the day and year first above written.

FOR ENTITY SELLERS: **FOR INDIVIDUAL SELLERS**:

/s/ Charles H. Garrett _____
(Print Company Name) (Your Signature)

By:_____ Charles H. Garrett _____
(Your Signature) (Your Printed Name)

Name:_____
(Your Printed Name)

Title:_____
(Your Title in the Company)

SELLER SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Membership Unit Purchase Agreement as of the day and year first above written.

FOR ENTITY SELLERS: **FOR INDIVIDUAL SELLERS**:

/s/ Christine H. Owen
(Print Company Name) (Your Signature)

By: Christine H. Owen
(Your Signature) (Your Printed Name)

Name:
(Your Printed Name)

Title:
(Your Title in the Company)

SELLER SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Membership Unit Purchase Agreement as of the day and year first above written.

FOR ENTITY SELLERS: **FOR INDIVIDUAL SELLERS**:

Circle B Interests, LLC
(Print Company Name) (Your Signature)

By: /s/ J. Patrick Burk `
(Your Signature) (Your Printed Name)

Name: J. Patrick Burk
(Your Printed Name)

Title: Manager
(Your Title in the Company)

SELLER SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Membership Unit Purchase Agreement as of the day and year first above written.

FOR ENTITY SELLERS: **FOR INDIVIDUAL SELLERS**:

/s/ D. Merril Cummings
(Print Company Name) (Your Signature)

By: D. Merril Cummings
(Your Signature) (Your Printed Name)

Name:
(Your Printed Name)

Title:
(Your Title in the Company)

SELLER SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Membership Unit Purchase Agreement as of the day and year first above written.

FOR ENTITY SELLERS: **FOR INDIVIDUAL SELLERS**:

/s/ Dan Massalone
(Print Company Name) (Your Signature)

By: Dan Massalone
(Your Signature) (Your Printed Name)

Name:
(Your Printed Name)

Title:
(Your Title in the Company)

SELLER SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Membership Unit Purchase Agreement as of the day and year first above written.

FOR ENTITY SELLERS: **FOR INDIVIDUAL SELLERS**:

DCB Interests Ltd.
(Print Company Name) (Your Signature)

By: /s/ David C. Buck
(Your Signature) (Your Printed Name)

Name: David C. Buck
(Your Printed Name)

Title: Managing General Partner
(Your Title in the Company)

SELLER SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Membership Unit Purchase Agreement as of the day and year first above written.

FOR ENTITY SELLERS: **FOR INDIVIDUAL SELLERS**:

/s/ Dennis Van Wagner
(Print Company Name) (Your Signature)

By: Dennis Van Wagner
(Your Signature) (Your Printed Name)

Name: /s/ Virginia Van Wagner
(Your Printed Name) (Your Signature)

Title: Virginia Van Wagner
(Your Title in the Company) (Your Printed Name)

SELLER SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Membership Unit Purchase Agreement as of the day and year first above written.

FOR ENTITY SELLERS: **FOR INDIVIDUAL SELLERS**:

/s/ Jonathan Fairbanks

(Print Company Name) (Your Signature)

By:_____ Jonathan Fairbanks

(Your Signature) (Your Printed Name)

Name:_____

(Your Printed Name)

Title:_____

(Your Title in the Company)

SELLER SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Membership Unit Purchase Agreement as of the day and year first above written.

FOR ENTITY SELLERS: **FOR INDIVIDUAL SELLERS**:

First Bischoff & Heins Corp. _____

(Print Company Name) (Your Signature)

By: /s/ Richard L. Bischoff _____

(Your Signature) (Your Printed Name)

Name: Richard L. Bischoff

(Your Printed Name)

Title: President

(Your Title in the Company)

SELLER SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Membership Unit Purchase Agreement as of the day and year first above written.

FOR ENTITY SELLERS: **FOR INDIVIDUAL SELLERS**:

/s/ Joy Seppala-Florence

(Print Company Name) (Your Signature)

By:_____ Joy Seppala-Florence

(Your Signature) (Your Printed Name)

Name:_____

(Your Printed Name)

Title:_____

(Your Title in the Company)

SELLER SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Membership Unit Purchase Agreement as of the day and year first above written.

FOR ENTITY SELLERS: **FOR INDIVIDUAL SELLERS**:

/s/ William J. Florence III
(Print Company Name) (Your Signature)

By:_____ William J. Florence III
(Your Signature) (Your Printed Name)

Name:_____
(Your Printed Name)

Title:_____
(Your Title in the Company)

SELLER SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Membership Unit Purchase Agreement as of the day and year first above written.

FOR ENTITY SELLERS: **FOR INDIVIDUAL SELLERS**:

/s/ Frank C. Adamek
(Print Company Name) (Your Signature)

By:_____ Frank C. Adamek
(Your Signature) (Your Printed Name)

Name:_____
(Your Printed Name)

Title:_____
(Your Title in the Company)

SELLER SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Membership Unit Purchase Agreement as of the day and year first above written.

FOR ENTITY SELLERS: **FOR INDIVIDUAL SELLERS**:

/s/ Frederick W. Brazelton
(Print Company Name) (Your Signature)

By:_____ Frederick W. Brazelton
(Your Signature) (Your Printed Name)

Name:_____
(Your Printed Name)

Title:_____
(Your Title in the Company)

SELLER SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Membership Unit Purchase Agreement as of the day and year first above written.

FOR ENTITY SELLERS: **FOR INDIVIDUAL SELLERS**:

/s/ Gabe Siegel
(Print Company Name) (Your Signature)

By: Gabe Siegel
(Your Signature) (Your Printed Name)

Name:
(Your Printed Name)

Title:
(Your Title in the Company)

SELLER SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Membership Unit Purchase Agreement as of the day and year first above written.

FOR ENTITY SELLERS: **FOR INDIVIDUAL SELLERS**:

/s/ Henry D. Dixon
(Print Company Name) (Your Signature)

By: Henry D. Dixon
(Your Signature) (Your Printed Name)

Name: /s/ Betsy B. Dixon
(Your Printed Name) (Your Signature)

Title: Betsy B. Dixon
(Your Title in the Company) (Your Printed Name)

SELLER SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Membership Unit Purchase Agreement as of the day and year first above written.

FOR ENTITY SELLERS: **FOR INDIVIDUAL SELLERS**:

Hermanson Family Limited Partnership
(Print Company Name) (Your Signature)

By: /s/ Eric B. Hermanson
(Your Signature) (Your Printed Name)

Name: Eric B. Hermanson
(Your Printed Name)

Title: Authorized Member
(Your Title in the Company)

SELLER SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Membership Unit Purchase Agreement as of the day and year first above written.

FOR ENTITY SELLERS: **FOR INDIVIDUAL SELLERS**:

The James and Vicky Pyle Family Trust _____
(Print Company Name) (Your Signature)

By: /s/ James M. Pyle _____
(Your Signature) (Your Printed Name)

Name: James M. Pyle
(Your Printed Name)

Title: Trustee
(Your Title in the Company)

SELLER SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Membership Unit Purchase Agreement as of the day and year first above written.

FOR ENTITY SELLERS: **FOR INDIVIDUAL SELLERS**:

/s/ Jay D. Fields
(Print Company Name) (Your Signature)

By: _____ Jay D. Fields
(Your Signature) (Your Printed Name)

Name: _____
(Your Printed Name)

Title: _____
(Your Title in the Company)

SELLER SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Membership Unit Purchase Agreement as of the day and year first above written.

FOR ENTITY SELLERS: **FOR INDIVIDUAL SELLERS**:

Jay Fields 2007 GST _____
(Print Company Name) (Your Signature)

By: /s/ Jay Fields _____
(Your Signature) (Your Printed Name)

Name: Jay Fields
(Your Printed Name)

Title: Trustee
(Your Title in the Company)

SELLER SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Membership Unit Purchase Agreement as of the day and year first above written.

FOR ENTITY SELLERS: **FOR INDIVIDUAL SELLERS**:

/s/ Jeff Snauwaert

(Print Company Name) (Your Signature)

By:_____ Jeff Snauwaert

(Your Signature) (Your Printed Name)

Name:_____

(Your Printed Name)

Title:_____

(Your Title in the Company)

SELLER SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Membership Unit Purchase Agreement as of the day and year first above written.

FOR ENTITY SELLERS: **FOR INDIVIDUAL SELLERS**:

/s/ Jim P. Wise

(Print Company Name) (Your Signature)

By:_____ Jim P. Wise

(Your Signature) (Your Printed Name)

Name:_____

(Your Printed Name)

Title:_____

(Your Title in the Company)

SELLER SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Membership Unit Purchase Agreement as of the day and year first above written.

FOR ENTITY SELLERS: **FOR INDIVIDUAL SELLERS**:

/s/ John E. Freeman

(Print Company Name) (Your Signature)

By:_____ John E. Freeman

(Your Signature) (Your Printed Name)

Name:_____

(Your Printed Name)

Title:_____

(Your Title in the Company)

SELLER SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Membership Unit Purchase Agreement as of the day and year first above written.

FOR ENTITY SELLERS: **FOR INDIVIDUAL SELLERS**:

/s/ John W. Puckett

(Print Company Name) (Your Signature)

By:_____ John W. Puckett

(Your Signature) (Your Printed Name)

Name:_____

(Your Printed Name)

Title:_____

(Your Title in the Company)

SELLER SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Membership Unit Purchase Agreement as of the day and year first above written.

FOR ENTITY SELLERS: **FOR INDIVIDUAL SELLERS**:

/s/ John R. Oren

(Print Company Name) (Your Signature)

By:_____ John R. Oren

(Your Signature) (Your Printed Name)

Name:_____

(Your Printed Name)

Title:_____

(Your Title in the Company)

SELLER SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Membership Unit Purchase Agreement as of the day and year first above written.

FOR ENTITY SELLERS: **FOR INDIVIDUAL SELLERS**:

/s/ Joshua E. Oren

(Print Company Name) (Your Signature)

By:_____ Joshua E. Oren

(Your Signature) (Your Printed Name)

Name:_____

(Your Printed Name)

Title:_____

(Your Title in the Company)

SELLER SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Membership Unit Purchase Agreement as of the day and year first above written.

FOR ENTITY SELLERS: **FOR INDIVIDUAL SELLERS**:

Locust Holdings LLC _____
(Print Company Name) (Your Signature)

By: /s/ Greg Moran _____
(Your Signature) (Your Printed Name)

Name: Greg Moran
(Your Printed Name)

Title: Manager
(Your Title in the Company)

SELLER SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Membership Unit Purchase Agreement as of the day and year first above written.

FOR ENTITY SELLERS: **FOR INDIVIDUAL SELLERS**:

The Marc L. Deer Irrevocable Trust _____
(Print Company Name) (Your Signature)

By: /s/ Marc L. Deer _____
(Your Signature) (Your Printed Name)

Name: Marc L. Deer
(Your Printed Name)

Title: Trustee
(Your Title in the Company)

SELLER SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Membership Unit Purchase Agreement as of the day and year first above written.

FOR ENTITY SELLERS: **FOR INDIVIDUAL SELLERS**:

/s/ Michael G. Jarvis
(Print Company Name) (Your Signature)

By: _____ Michael G. Jarvis
(Your Signature) (Your Printed Name)

Name: _____
(Your Printed Name)

Title: _____
(Your Title in the Company)

SELLER SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Membership Unit Purchase Agreement as of the day and year first above written.

FOR ENTITY SELLERS: **FOR INDIVIDUAL SELLERS**:

/s/ Michael K. Mithoff
(Print Company Name) (Your Signature)

By: Michael K. Mithoff
(Your Signature) (Your Printed Name)

Name:
(Your Printed Name)

Title:
(Your Title in the Company)

SELLER SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Membership Unit Purchase Agreement as of the day and year first above written.

FOR ENTITY SELLERS: **FOR INDIVIDUAL SELLERS**:

/s/ Michael Owen
(Print Company Name) (Your Signature)

By: Michael Owen
(Your Signature) (Your Printed Name)

Name:
(Your Printed Name)

Title:
(Your Title in the Company)

SELLER SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Membership Unit Purchase Agreement as of the day and year first above written.

FOR ENTITY SELLERS: **FOR INDIVIDUAL SELLERS**:

Mitrowski Revocable Trust
(Print Company Name) (Your Signature)

By: /s/ Laurence E. Mitrowski
(Your Signature) (Your Printed Name)

Name: Laurence E. Mitrowski
(Your Printed Name)

Title: Trustee
(Your Title in the Company)

SELLER SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Membership Unit Purchase Agreement as of the day and year first above written.

FOR ENTITY SELLERS: **FOR INDIVIDUAL SELLERS**:

Pelican State Investment Group, LLC _____
(Print Company Name) (Your Signature)

By: /s/ Ronald V. Burns, Sr. _____
(Your Signature) (Your Printed Name)

Name: Ronald V. Burns, Sr.
(Your Printed Name)

Title: Managing Member
(Your Title in the Company)

SELLER SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Membership Unit Purchase Agreement as of the day and year first above written.

FOR ENTITY SELLERS: **FOR INDIVIDUAL SELLERS**:

The Peter H. Dominick, Jr.
Family Trust, effective 1/1/2009 _____
(Print Company Name) (Your Signature)

By: /s/ Philae C. Dominick _____
(Your Signature) (Your Printed Name)

Name: Philae C. Dominick
(Your Printed Name)

Title: Trustee
(Your Title in the Company)

SELLER SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Membership Unit Purchase Agreement as of the day and year first above written.

FOR ENTITY SELLERS: **FOR INDIVIDUAL SELLERS**:

/s/ Peter Glynn
(Print Company Name) (Your Signature)

By: _____ Peter Glynn
(Your Signature) (Your Printed Name)

Name: _____
(Your Printed Name)

Title: _____
(Your Title in the Company)

SELLER SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Membership Unit Purchase Agreement as of the day and year first above written.

FOR ENTITY SELLERS: **FOR INDIVIDUAL SELLERS**:

/s Richard Oren
(Print Company Name) (Your Signature)

By: Richard Oren
(Your Signature) (Your Printed Name)

Name:
(Your Printed Name)

Title:
(Your Title in the Company)

SELLER SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Membership Unit Purchase Agreement as of the day and year first above written.

FOR ENTITY SELLERS: **FOR INDIVIDUAL SELLERS**:

SB Invesco, LLC
(Print Company Name) (Your Signature)

By: /s/ Eric Houston
(Your Signature) (Your Printed Name)

Name: Eric Houston
(Your Printed Name)

Title: Manager
(Your Title in the Company)

SELLER SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Membership Unit Purchase Agreement as of the day and year first above written.

FOR ENTITY SELLERS: **FOR INDIVIDUAL SELLERS**:

Seis Holdings, LLC
(Print Company Name) (Your Signature)

By: /s/ Ronald H. Jacobs, Jr.
(Your Signature) (Your Printed Name)

Name: Ronald H. Jacobs, Jr.
(Your Printed Name)

Title: President
(Your Title in the Company)

SELLER SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Membership Unit Purchase Agreement as of the day and year first above written.

FOR ENTITY SELLERS: **FOR INDIVIDUAL SELLERS**:

/s/ Stephen L. Owen
(Print Company Name) (Your Signature)

By: Stephen L. Owen
(Your Signature) (Your Printed Name)

Name:
(Your Printed Name)

Title:
(Your Title in the Company)

SELLER SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Membership Unit Purchase Agreement as of the day and year first above written.

FOR ENTITY SELLERS: **FOR INDIVIDUAL SELLERS**:

Taylor Chanaratsopon Trust U/T/A Dated 6/4/2012
(Print Company Name) (Your Signature)

By: /s/ Charles J. Chanaratsopon
(Your Signature) (Your Printed Name)

Name: Charles J. Chanaratsopon
(Your Printed Name)

Title: Trustee
(Your Title in the Company)

SELLER SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Membership Unit Purchase Agreement as of the day and year first above written.

FOR ENTITY SELLERS: **FOR INDIVIDUAL SELLERS**:

Avery Interests, LLC
(Print Company Name) (Your Signature)

By: /s/ David L. Ducote
(Your Signature) (Your Printed Name)

Name: David L. Ducote
(Your Printed Name)

Title: Managing Member
(Your Title in the Company)

SELLER SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Membership Unit Purchase Agreement as of the day and year first above written.

FOR ENTITY SELLERS: **FOR INDIVIDUAL SELLERS**:

/s/ William F. Miller III

(Print Company Name) (Your Signature)

By:_____ William F. Miller III

(Your Signature) (Your Printed Name)

Name:_____

(Your Printed Name)

Title:_____

(Your Title in the Company)

KE 42161585

Exhibit 31.1

CERTIFICATION

I, Bryan A. Shinn, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of U.S. Silica Holdings, Inc. (the "Company") for the quarter ended September 30, 2016;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

    a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

    c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

    d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

    a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

    b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: November 4, 2016

/s/ BRYAN A. SHINN

Name: Bryan A. Shinn

Title: Chief Executive Officer

Exhibit 31.2

CERTIFICATION

I, Donald A. Merril, certify that:

1. I have reviewed this quarterly report on Form 10-Q of U.S. Silica Holdings, Inc. (the "Company") for the quarter ended September 30, 2016;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

    a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

    c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

    d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

    a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

    b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: November 4, 2016

/s/ DONALD A. MERRIL

Name: Donald A. Merril

Title: Chief Financial Officer

Exhibit 32.1

SECTION 1350 CERTIFICATION

I, Bryan A. Shinn, Chief Executive Officer, U.S. Silica Holdings, Inc. (the "Company"), hereby certify, on the date hereof, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

i. The Quarterly Report on Form 10-Q of the Company for the quarter ended September 30, 2016 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

ii. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: November 4, 2016

/s/ BRYAN A. SHINN

Name: Bryan A. Shinn

Title: Chief Executive Officer

A signed copy of this original statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff on request.

Exhibit 32.2

SECTION 1350 CERTIFICATION

I, Donald A. Merril, Chief Financial Officer, U.S. Silica Holdings, Inc. (the "Company"), hereby certify, on the date hereof, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

i. The Quarterly Report on Form 10-Q of the Company for the quarter ended September 30, 2016 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

ii. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: November 4, 2016

/s/ DONALD A. MERRIL

Name: Donald A. Merril

Title: Chief Financial Officer

A signed copy of this original statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff on request.

Exhibit 95.1

Mine Safety Disclosure

The following disclosures are provided pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act") and Item 104 of Regulation S-K, which requires certain disclosures by companies required to file periodic reports under the Securities Exchange Act of 1934, as amended, that operate mines regulated under the Federal Mine Safety and Health Act of 1977 (the "Mine Act").

Mine Safety Information. Whenever the Federal Mine Safety and Health Administration ("MSHA") believes a violation of the Mine Act, any health or safety standard or any regulation has occurred, it may issue a citation which describes the alleged violation and fixes a time within which the U.S. mining operator must abate the alleged violation. In some situations, such as when MSHA believes that conditions pose a hazard to miners, MSHA may issue an order removing miners from the area of the mine affected by the condition until the alleged hazards are corrected. When MSHA issues a citation or order, it generally proposes a civil penalty, or fine, as a result of the alleged violation, that the operator is ordered to pay. Citations and orders can be contested and appealed, and as part of that process, are often reduced in severity and amount, and are sometimes dismissed. The number of citations, orders and proposed assessments vary depending on the size and type (underground or surface) of the mine as well as by the MSHA inspector(s) assigned.

Mine Safety Data. The following provides additional information about references used in the table below to describe the categories of violations, orders or citations issued by MSHA under the Mine Act:

- *Section 104 S&S Citations:* Citations received from MSHA under section 104 of the Mine Act for violations of mandatory health or safety standards that could significantly and substantially contribute to the cause and effect of a mine safety or health hazard.
- *Section 104(b) Orders:* Orders issued by MSHA under section 104(b) of the Mine Act, which represents a failure to abate a citation under section 104(a) within the period of time prescribed by MSHA. This results in an order of immediate withdrawal from the area of the mine affected by the condition until MSHA determines that the violation has been abated.
- *Section 104(d) Citations and Orders:* Citations and orders issued by MSHA under section 104(d) of the Mine Act for unwarrantable failure to comply with mandatory health or safety standards.
- *Section 110(b)(2) Violations:* Flagrant violations issued by MSHA under section 110(b)(2) of the Mine Act.
- *Section 107(a) Orders:* Orders issued by MSHA under section 107(a) of the Mine Act for situations in which MSHA determined an "imminent danger" (as defined by MSHA) existed.

The following table details the violations, citations and orders issued to us by MSHA during the quarter ended September 30, 2016:

Mine[1]	Section 104 S&S Citations (#)	Section 104(b) Orders (#)	Section 104(d) Citations and Orders (#)	Section 110(b)(2) Violations (#)	Section 107(a) Orders (#)	Proposed Assessments[2] ($, amounts in dollars)	Mining Related Fatalities (#)
Ottawa, IL	7	—	—	—	—	$ 5,717	—
Mill Creek, OK	—	—	—	—	—	—	—
Pacific, MO	—	—	—	—	—	228	—
Berkeley Springs, WV	1	—	—	—	—	—	—
Mapleton Depot, PA	—	—	—	—	—	228	—
Kosse, TX	—	—	—	—	—	290	—
Mauricetown, NJ	—	—	—	—	—	114	—
Columbia, SC	1	—	—	—	—	—	—
Montpelier, VA	—	—	—	—	—	—	—
Rockwood, MI	—	—	—	—	—	—	—
Jackson, TN	—	—	—	—	—	—	—
Dubberly, LA	—	—	—	—	—	—	—
Hurtsboro, AL	1	—	—	—	—	—	—
Sparta, WI	—	—	—	—	—	—	—
Voca, TX	—	—	—	—	—	185	—
Peru, IL	—	—	—	—	—	—	—
Utica, IL	5	—	—	—	—	914	—
Tyler, TX	—	—	—	—	—	—	—

(1) The definition of mine under section 3 of the Mine Act includes the mine, as well as other items used in, or to be used in, or resulting from, the work of extracting minerals, such as land, structures, facilities, equipment, machines, tools and minerals preparation facilities. Unless otherwise indicated, any of these other items associated with a single mine have been aggregated in the totals for that mine. MSHA assigns an identification number to each mine and may or may not assign separate identification numbers to related facilities such as preparation facilities. We are providing the information in the table by mine rather than MSHA identification number because that is how we manage and operate our mining business and we believe this presentation will be more useful to investors than providing information based on MSHA identification numbers.

(2) Represents the total dollar value of proposed assessments from MSHA under the Mine Act relating to any type of citation or order issued during the quarter ended September 30, 2016.

Pattern or Potential Pattern of Violations. During the quarter ended September 30, 2016, none of the mines operated by us received written notice from MSHA of (a) a pattern of violations of mandatory health or safety standards that are of such nature as could have significantly and substantially contributed to the cause and effect of mine health or safety hazards under section 104(e) of the Mine Act or (b) the potential to have such a pattern.

Pending Legal Actions. There were 67 legal actions pending before the Federal Mine Safety and Health Review Commission (the Commission) as of September 30, 2016, each of which is a contest proceeding filed by us to challenge a citation or order issued by MSHA under the Mine Act and includes 20 contests challenging Section 104 S&S citations. During the quarter ended September 30, 2016, 6 legal actions were instituted and 16 legal actions were resolved. The Commission is an independent adjudicative agency established by the Mine Act that provides administrative trial and appellate review of legal disputes arising under the Mine Act.

Exhibit 99.1

CONSENT OF PROPTESTER, INC.

We hereby consent to the references to our company's name in the Quarterly Report on Form 10-Q for the Quarterly Period Ended September 30, 2016 (the "Quarterly Report") of U.S. Silica Holdings, Inc. (the "Company") and the quotation by the Company in the Quarterly Report from 2014 Proppant Market Report, published February 2015. We also hereby consent to the filing of this letter as an exhibit to the Quarterly Report.

PROPTESTER, INC.

By: /s/ Ian Renkes

Name: Ian Renkes

Title: Manager of Operations

November 4, 2016