

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

In re:

TARONIS FUELS, INC., *et al.*

Debtors.

Chapter 11

Case No. 22-11121 (BLS) (Jointly
Administered)

Related Docket Nos. 45, 147, 251, 283

**ORDER (I) AUTHORIZING THE SALE OF TEXAS ASSETS FREE
AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND OTHER
INTERESTS, (II) AUTHORIZING DEBTORS TO ASSUME AND ASSIGN CERTAIN
EXECUTORY CONTRACTS, AND (III) GRANTING OTHER RELATED RELIEF**

Upon the Debtors' Motion for Entry of Orders (I)(A) Approving Bidding Procedures for the Sale of the Debtors' Texas Assets, (B) Authorizing the Debtors to Designate a Stalking Horse Bidder and to Seek Approval of Bid Protections, (C) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (D) Approving Assumption and Assignment Procedures, (E) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof, and (F) Granting Related Relief; and (II)(A) Approving the Sale of the Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases, and (C) Granting Related Relief [Docket No. 45] (the "Sale Motion"); and pursuant to this Court's Amended Order (I) Approving Bidding Procedures for the Sale of the Debtors' Texas Assets, (II) Authorizing the Debtors to Designate a Stalking Horse Bidder and to Seek approval of Bid Protections, (III) Scheduling an Auction and Approving the Forma and Manner of Notice Thereof; (IV) Approving Assumption and Assignment Procedures; (V) Scheduling a Sale Hearing and Approving the Form and Manner of Notice thereof, and (VI) Granting Related Relief [Docket No. 147] (the "Bidding Procedures Order"), the Court having authorized the above captioned debtors and debtors-in-possession (the "Debtors") to enter into that certain Asset Purchase Agreement by and among MagneGas Welding Supply –

South, LLC, Taronis Fuels, Inc., and MPG Holdings III Corp. (“MPG”) (as may be amended or otherwise modified from time to time and including all related instruments, documents, exhibits, schedules, and agreements thereto, collectively, the “APA”), a copy of which is collectively attached hereto as **Exhibit A**, pursuant to which MPG and Mitchell Welding Supply, LLC, a wholly owned subsidiary of MPG and assignee under the APA, (collectively, the “Purchaser”) agree to purchase the Purchased Assets, free and clear of all Claims and Liens (as defined below), with such sale to be in accordance with the terms and conditions of the APA; and the Bidding Procedures Order having authorized the Debtors to conduct, and approving the terms and conditions of, an auction as set forth in the Bidding Procedures Order (the “Auction”) to consider offers for the Purchased Assets, establishing a date for the Auction, and approving, among other things: (i) certain Bidding Procedures (the “Bidding Procedures”) to be used in connection with the Auction; (ii) the form and manner of notice of the Auction and Bidding Procedures; (iii) procedures relating to certain unexpired leases and executory contracts, including notice of proposed cure amounts; and the Court having established the date of the hearing on the Sale Motion (the “Sale Hearing”); and the Court having jurisdiction to consider the Sale Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157(b)(2) and 1334; and venue being proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; and in consideration of the Sale Motion, the relief requested therein, and the responses thereto being a core proceeding in accordance with 28 U.S.C. § 157(b); and the appearance of all interested parties and all responses and objections to the Sale Motion having been duly noted in the record of the Sale Hearing; and upon the record of the Sale Hearing, and all other pleadings and proceedings in these Chapter 11 Cases, including the Sale Motion and the affidavits of service regarding the Sale Motion [Docket No. 74]; and it appearing that the relief requested in the Sale Motion is in the best interests of the

Debtors, their estates, their stakeholders and all other parties in interest; and after due deliberation and sufficient cause appearing therefore;

IT IS HEREBY FOUND, DETERMINED AND CONCLUDED THAT:

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

B. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

C. The Court has jurisdiction over this matter and over the property of the Debtors' estates, including the Purchased Assets to be sold, transferred, or conveyed pursuant to the APA, pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* dated February 29, 2012. This matter is a "core proceeding" pursuant to 28 U.S.C. § 157(b)(2). Venue of these Chapter 11 Cases and the Sale Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

D. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). To any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, the Court expressly finds that there is no just reason for delay in the implementation of this Order, and expressly directs entry of judgment as set forth herein and the closing of all transactions contemplated hereby without regard to any stay or delay in its implementation.

E. The statutory and rule-based predicates for the relief requested in the Sale Motion and for the approvals and authorizations herein are (i) sections 102, 105, 363 and 365 of the Bankruptcy Code, (ii) Bankruptcy Rules 2002, 6004, 6006, and 9014 and (iii) Local Rule 6004-1.

F. On November 11, 2022 (the “Petition Date”), the Debtors filed voluntary petitions under chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtors have continued in possession and management of their businesses and properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

G. As evidenced by the affidavits of service filed with the Court [Docket Nos. 74, 230 & 239], proper, timely, adequate, and sufficient notice of, and a reasonable opportunity to object or otherwise to be heard regarding: the Sale Motion, the Sale Hearing, and the transactions contemplated by the APA, including the sale of the Debtors’ Purchased Assets (the “Sale”) have been provided in accordance with sections 102(1) and 363(b) of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 9006, 9007, 9008, and 9014, the Local Rules of the Court, and the procedural due process requirements of the United States Constitution, and in compliance with the Bidding Procedures Order. The Debtors also gave due and proper notice of the potential assumption, sale, and assignment of the contracts listed in the APA (the “Assigned Contracts”) to the non-debtor party under the Assigned Contracts. Such notice was good and sufficient and appropriate under the particular circumstances. No other or further notice of, opportunity to object to, or other opportunity to be heard regarding the Sale Motion, the Auction, the Sale Hearing, the assumption and assignment of the Assigned Contracts, or of the entry of this Order is necessary or shall be required.

H. A reasonable opportunity to object or be heard regarding the requested relief has been afforded to all interested persons and entities, including, without limitation, (i) all entities

that claim any interest in or lien upon the Purchased Assets, (ii) all non-debtor parties to the Assigned Contracts assumed and sold and assigned pursuant to this Order, (iii) all governmental taxing authorities that have, or as a result of the sale of the Purchased Assets may have, Claims, contingent or otherwise, against the Debtors, (iv) all parties that filed requests for notices under Bankruptcy Rule 9010(b) or were entitled to notice under Bankruptcy Rule 2002 or Local Rule 2002-1, (v) all creditors (whether their Claims are liquidated, contingent, or unmatured) of the Debtors, (vi) all interested governmental, pension and environmental authorities, (vii) the Office of the United States Trustee for the District of Delaware, and (viii) all entities that heretofore expressed to the Debtors a serious interest in purchasing the Purchased Assets. Other parties interested in bidding on the Purchased Assets were provided, pursuant to the Bidding Procedures Order, sufficient information to make an informed judgment on whether to bid on the Purchased Assets.

I. The Purchased Assets are property of the Debtors' estates and title thereto is vested in the Debtors' estates.

J. The Debtors have demonstrated a sufficient basis and the existence of reasonable, appropriate and compelling circumstances requiring them to enter into the APA, sell or transfer the Purchased Assets and assume and assign the Assigned Contracts, to Purchaser under sections 363 and 365 of the Bankruptcy Code, and such actions are appropriate exercises of the Debtors' business judgment and in the best interests of the Debtors, their estates and their stakeholders.

K. The Bidding Procedures set forth in the Bidding Procedures Order were non-collusive, substantively and procedurally fair to all parties.

L. The Debtors and their professionals have complied, in good faith, in all respects with the Bidding Procedures Order. As demonstrated by (i) the testimony and other evidence proffered or adduced at the Sale Hearing or submitted by affidavit or declaration at or prior to the Sale Hearing and (ii) the representations of counsel made on the record at the Sale Hearing, through marketing efforts and a competitive sale process conducted in accordance with the Bidding Procedures Order, the Debtors (a) afforded interested potential purchasers a full, fair, and reasonable opportunity to qualify as bidders and submit their highest or otherwise best offer to purchase all of the Debtors' assets, (b) provided potential purchasers, upon request, sufficient information to enable them to make an informed judgment on whether to bid on the Purchased Assets, and (c) considered any bids submitted on or before the deadline to submit bids as set forth in the Bidding Procedures (the "Bid Deadline").

M. The offer of Purchaser, upon the terms and conditions set forth in the APA, including the form and total consideration to be realized by the Debtors pursuant to the APA, (i) is the highest or best offer received by the Debtors, (ii) is fair and reasonable, (iii) is in the best interests of the Debtors' stakeholders and estates, (iv) constitutes full and fair consideration and reasonably equivalent value for the Purchased Assets, and (v) will provide a greater recovery for the Debtors' creditors, and other interested parties than would be provided by any other practically available alternative. No other entity or group of entities has offered to purchase the Purchased Assets for greater economic value to the Debtors' estates than the Purchaser.

N. Purchaser is not an "insider" or "affiliate" of the Debtors as those terms are defined in the Bankruptcy Code and the decisions thereunder. Purchaser is a purchaser in "good faith," as that term is used in the Bankruptcy Code and the decisions thereunder and is entitled to the protections of section 363(m) and (n) of the Bankruptcy Code with respect to the Purchased Assets.

The APA was negotiated and entered into in good faith, based upon arm's-length bargaining, and without collusion or fraud of any kind. Neither the Debtors nor Purchaser have engaged in any conduct that would prevent the application of section 363(m) of the Bankruptcy Code or cause the application of, or implicate, section 363(n) of the Bankruptcy Code to the APA or to the consummation of the sale transaction and transfer of the Purchased Assets and Assigned Contracts to Purchaser. Purchaser is purchasing the Purchased Assets (including the Assigned Contracts) in good faith and is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code and is, therefore, entitled to the protection of that provision, and otherwise has proceeded in good faith in all respects in connection with this proceeding in that: (i) Purchaser recognized that the Debtors were free to deal with any other party interested in acquiring the Purchased Assets, (ii) Purchaser complied with the provisions in the Bidding Procedures Order, (iii) all consideration to be paid by Purchaser and other agreements or arrangements entered into by Purchaser in connection with the sale have been disclosed, (iv) Purchaser has not violated section 363(n) of the Bankruptcy Code by any action or inaction, and (v) the negotiation and execution of the APA and any other agreements or instruments related thereto were in good faith.

O. The Debtors have full corporate power and authority to execute the APA (and all other documents contemplated thereby) and consummate the transactions contemplated therein, and the sale or transfer of the Purchased Assets and has been duly and validly authorized by all necessary corporate actions on the part of the Debtors. No consents or approvals, other than as may be expressly provided for in the APA, are required by the Debtors to consummate such transactions.

P. The Debtors have advanced sound business reasons for entering into the APA and selling and/or assuming and selling and assigning the Purchased Assets, as more fully set forth in

the Sale Motion and APA and as demonstrated at the Sale Hearing, and it is a reasonable exercise of the Debtors' business judgment to sell and/or assume and sell and assign the Purchased Assets and to consummate the transactions contemplated by the APA. Notwithstanding any requirement for approval or consent by any person, the transfer of the Purchased Assets to Purchaser and the assumption and assignment of the Assigned Contracts is a legal, valid, and effective transfer of the Purchased Assets (including the Assigned Contracts).

Q. The terms and conditions of the APA, including the consideration to be realized by the Debtors pursuant to the APA, are fair and reasonable, and the transactions contemplated by the APA and reflected in this Order are in the best interests of the Debtors' estates.

R. Other than the Assumed Liabilities and except as set forth in the APA, the Purchased Assets shall be sold free and clear of any and all liens (statutory or otherwise, including, without limitation, "lien" as defined in Section 101(37) of the Bankruptcy Code, mechanics', materialmens' and other consensual and non-consensual liens and statutory liens), hypothecations, encumbrances, security interests, mortgages, debts, levies, indentures, pledges, restrictions (whether on voting, sale, transfer, disposition or otherwise), charges, instruments, preferences, priorities, security agreements, conditional sales agreements, title retention contracts, options, Claims, judgments, offsets, rights of recovery, rights of pre-emption, rights of first refusal or other third party rights, Claims for reimbursement, contribution, indemnity, exoneration, products liability, alter-ego, environmental, or Tax (including Claims for any and all foreign, federal, state and local Taxes), decrees of any court or foreign or domestic governmental entity, orders of any Governmental Authority, of any kind or nature (including (i) any conditional sale or other title retention agreement and any lease having substantially the same effect as any of the foregoing, (ii) any assignment or deposit arrangement in the nature of a security device, and (iii) any Claim

based on any theory that either Purchaser is a successor or a continuation of the Debtors or the Debtors' business), reclamation Claims, obligations, liabilities, demands, and guaranties, whether known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, whether arising prior to or subsequent to the commencement of the bankruptcy cases, and whether imposed by agreement, understanding, law, equity or otherwise, including Claims otherwise arising under doctrines of successor liability (collectively, the "Liens").

S. The Liens (other than the Permitted Liens, as defined in the APA and hereinafter, the "Permitted Liens") shall attach to the consideration to be received by the Debtors in the same priority and extent (and subject to the same defenses and avoidability, if any), as they existed as of the closing date of the transactions contemplated by the APA (the "Closing") and Purchaser would not enter into the APA to purchase the Purchased Assets or proceed to the Closing otherwise.

T. The transfer of the Purchased Assets to Purchaser under the APA and this Order will be a legal, valid, and effective transfer of the Purchased Assets and shall vest Purchaser with all right, title, and interest of the Debtors to the Purchased Assets free and clear of any and all Liens (other than the Permitted Liens and Assumed Liabilities). Except as specifically provided in the APA or this Order, Purchaser shall not assume or become liable for any Liens (other than the Permitted Liens and Assumed Liabilities) relating to the Purchased Assets.

U. The transfer of the Purchased Assets to Purchaser free and clear of all Liens (other than the Permitted Liens and Assumed Liabilities) will not result in any undue burden or prejudice

to any holders of any Liens, because all such Liens of any kind or nature whatsoever shall attach to the net proceeds of the sale of the Purchased Assets received by the Debtors in the order of their priority, with the same validity, force, and effect which they have as of the Closing as against the Purchased Assets and subject to any claims and defenses the Debtors or other parties may possess with respect thereto. All persons having Liens of any kind or nature whatsoever against any of the Debtors or the Purchased Assets shall be forever barred and estopped from pursuing or asserting such Liens (other than the Permitted Liens and Assumed Liabilities) against Purchaser or any of its assets, property, successors or assigns, or the Purchased Assets.

V. The Debtors may sell the Purchased Assets free and clear of all Liens of any kind or nature whatsoever (other than the Permitted Liens and Assumed Liabilities) because, in each case, one or more of the standards set forth in section 363(f) of the Bankruptcy Code has been satisfied. In the case of the Liens of Tech Capital LLC (the “Lender”) (arising under that certain Loan and Security Agreement dated as of October 21, 2020 as amended from time to time including the Third Modification to Loan and Security Agreement, dated as of November 13, 2022 as amended from time to time together with other related agreements and orders authorizing post-petition financing by Lender and related relief including the final order entered as Docket No. 136 in these Chapter 11 Cases). Those (i) holders of Liens and (ii) non-debtor parties to the Assigned Contracts, who did not object, or who withdrew its objection, to the sale of the Purchased Assets and the Sale Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. Except as set forth below, all objections to the Sale Motion, including objections by non-debtor parties to the Assigned Contracts, have been overruled or resolved. Those holders of Liens who did object fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and are adequately protected by having their Liens, if any, attach to the proceeds of the Sale

of the Purchased Assets ultimately attributable to the property against or in which they claim or may claim any Liens, with such Liens being subject to treatment as prescribed in any chapter 11 plan or by separate order of this Court.

W. Not selling the Purchased Assets free and clear of all Liens (other than the Permitted Liens and Assumed Liabilities) would adversely impact the Debtors' estates, and the sale of Purchased Assets other than one free and clear of all Liens (other than the Permitted Liens and Assumed Liabilities) would be of substantially less value to the Debtors' estates.

X. The sale of the Purchased Assets outside of a plan of reorganization pursuant to the APA neither impermissibly restructures the rights of the Debtors' creditors nor impermissibly dictates the terms of a liquidating plan or reorganization of the Debtors. The Sale does not constitute a *sub rosa* chapter 11 plan.

Y. The Debtors and Purchaser have, to the extent necessary, satisfied the requirements of section 365 of the Bankruptcy Code, including subsections 365(b)(1)(A), (B) and 365(f), in connection with the sale and the assumption and assignment of the Assigned Contracts. Purchaser has demonstrated adequate assurance of future performance with respect to the Assigned Contracts pursuant to section 365(b)(1)(C) of the Bankruptcy Code.

Z. The assumption and assignment of the Assigned Contracts pursuant to the terms of this Order is integral to the APA and is in the best interests of the Debtors, their estates, their stakeholders and other parties in interest, and represents the exercise of sound and prudent business judgment by the Debtors.

AA. The Assigned Contracts are assignable notwithstanding any provisions contained therein to the contrary. The Purchaser shall have sole responsibility for paying all Cure Costs required to assume and assign the Assigned Contracts to Purchaser. The notice and opportunity

to object provided to the contract counterparty to such contracts and to other parties in interest fairly and reasonably protects any rights that such contract counterparty and other parties in interest may have with respect to such contracts.

BB. Pursuant to Section 6.02 of the APA, the Debtors are required to enter into the Transition Services Agreement in substantially the form set forth as Exhibit C to the APA. Purchaser would not have agreed to the transactions set forth in the APA without the Debtors' entry into the Transition Services Agreement.

CC. The notice and opportunity to object provided to the Debtors' parties in interest, as set forth in the Bidding Procedures Order, fairly and reasonably protects any rights of any party in interest.

DD. Purchaser will be acting in good faith, pursuant to section 363(m) of the Bankruptcy Code, in closing the transactions contemplated by the APA at any time on or after the entry of this Order and cause has been shown as to why this Order should not be subject to any stay, including, without limitation, as provided by Bankruptcy Rules 6004(h), 6006(d) and Local Rule 6004-1.

EE. The transactions contemplated under the APA do not amount to a consolidation, merger, or *de facto* merger of Purchaser, on the one hand, and the Debtors and/or the Debtors' estates, on the other. By virtue of the consummation of transactions contemplated by the APA, (i) there is not substantial continuity between Purchaser, on the one hand, and the Debtors, on the other, (ii) there is no continuity of enterprise between the Debtors and the Purchaser, (iii) the Purchaser is not a mere continuation of the Debtors or their estates, and (iv) the Purchaser is not a successor to the Debtors or their estates.

FF. The APA was not entered into, and none of the Debtors or the Purchaser have entered into the APA or proposed to consummate the transactions contemplated thereby, for the

purpose of hindering, delaying or defrauding the Debtors' present or future creditors. The total consideration provided by Purchaser for the Purchased Assets was the highest or otherwise best offer received by the Debtors, and the Purchase Price and other consideration under the APA, including the assumption of the Assumed Liabilities, constitutes (a) reasonably equivalent value under the Bankruptcy Code and the Uniform Fraudulent Transfer Act, (b) fair consideration under the Uniform Fraudulent Conveyance Act, and (c) reasonably equivalent value, fair consideration, and fair value under any other applicable laws of the United States, any state, territory or possession, or the District of Columbia, for the Purchased Assets.

GG. Time is of the essence in consummating the sale. In order to maximize the value of the Purchased Assets, it is essential that the sale of the Purchased Assets occur within the time constraints set forth in the APA. Accordingly, there is cause to lift the stays contemplated by Bankruptcy Rules 6004 and 6006.

HH. At and effective as the Closing, Purchaser shall assume sole responsibility for paying and satisfying the Assumed Liabilities, including all liabilities and obligations of the Debtors related to or arising under the Assigned Contracts. For the avoidance of doubt, nothing in this Order (including, without limitation, any provisions in this Order regarding the sale, transfer or conveyance of the Purchased Assets free and clear of Liens, except for Permitted Liens and Assumed Liabilities) nor in the APA shall be construed to mean that Purchaser is not assuming from the Debtors and thereafter becoming solely responsible for the payment, performance and discharge of the Assumed Liabilities. After the Closing, the Debtors shall have no liability whatsoever with respect to the Assumed Liabilities. Purchaser shall have no obligations with respect to any liabilities of the Debtors other than the Assumed Liabilities, including Cure Costs.

NOW, THEREFORE, BASED UPON ALL OF THE FOREGOING, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The relief requested in the Sale Motion is granted as set forth herein and the entry into the APA is authorized, subject to the terms and conditions contained herein. The Sale Motion complies with all aspects of Local Rules 6004-1.

2. Except as otherwise expressly set forth herein, all objections, responses, reservations of rights, and requests for continuance concerning the Sale Motion are resolved in accordance with the terms of this Order and as set forth in the record of the Sale Hearing. To the extent any such objection, response, reservation of rights, or request for continuance was not otherwise withdrawn, waived, or settled, it is overruled and denied on the merits with prejudice.

3. Notice of the Sale Hearing was fair, equitable, proper, and sufficient under the circumstances and complied in all respects with section 102(1) of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, and 6006, and the Local Rules.

4. The Debtors, in transferring the Purchased Assets pursuant to this Order and sections 363 and 365 of the Bankruptcy Code, are deemed, under section 1007(a) of the Bankruptcy Code, to have all rights and powers to perform all the functions and duties of a trustee serving in a case under Chapter 11 and will transfer the Purchased Assets pursuant to this Order.

5. Subject to the terms of this Order, the sale of the Purchased Assets, the terms and conditions of the APA (including all schedules and exhibits affixed thereto), and the transactions contemplated thereby shall be, and hereby are, authorized and approved in all respects, and shall be enforceable against each of the parties thereto.

6. The failure specifically to include any particular provisions of the APA or any of the documents, ancillary documents, or instruments executed in connection therewith in this Order shall not diminish or impair the force of such provision, document, agreement, or instrument, it

being the intent of the Court, the Debtors, and Purchaser, that the APA and each document, ancillary document, or instrument be authorized and approved in its entirety with such amendments thereto as may be made by the parties in accordance with this Order prior to the Closing.

7. The APA and any related ancillary document, documents, or other instruments may be modified, amended, or supplemented by the parties thereto in accordance with the terms thereof without further order of the Court; provided, that any such modification, amendment, or supplement is not material and substantially conforms to, and effectuates, the APA and any related ancillary documents; provided further, that the Debtors shall provide the Lender with advance notice of any such modification, amendment, or supplement. Within three (3) Business Days of consummation of the Closing, the Debtors shall file and serve a complete copy of the final version of the APA if there are any modifications, amendments or supplements thereto.

8. The sale of the Purchased Assets and the consideration provided by Purchaser under the APA are fair and reasonable, the highest or otherwise best offer for the Purchased Assets and shall be deemed for all purposes to constitute a transfer for reasonably equivalent value and fair consideration under the Bankruptcy Code and any other applicable law. The Sale of the Purchased Assets to the Purchaser is a legal, valid and effective transfer of the Purchased Assets notwithstanding any requirement for approval or consent of any entity.

9. Purchaser is hereby granted and is entitled to all the protections provided to a good faith purchaser under section 363(m) of the Bankruptcy Code, including with respect to the transfer of the Assigned Contracts as part of the sale of the Purchased Assets pursuant to section 365 of the Bankruptcy Code and this Order.

10. The Debtors and their officers, employees, and agents shall be, and hereby are, authorized to fully assume, perform under, consummate, and implement the terms of the APA together with any and all additional instruments and documents that may be necessary or desirable in connection with implementing and effectuating the terms of the APA, this Order, and/or the sale of the Purchased Assets, including, without limitation, the Transition Services Agreement, certificates, deeds, assignments, and other instruments of transfer, and to take all further actions as may reasonably be requested by Purchaser for the purpose of assigning, transferring, granting, conveying, and conferring to Purchaser or reducing to possession, any or all of the Purchased Assets or Assumed Liabilities, as may be necessary or appropriate to the performance of the Debtors' obligations in accordance with, or as contemplated by, the APA, without any further corporate action or orders of this Court.

11. The Debtors and each other person or entity having duties or responsibilities under the APA, any agreements or instruments related thereto or this Order, and their respective directors, officers, managers, employees, members, agents, representatives, and attorneys, are authorized and empowered, subject to the terms and conditions contained in the APA and this Order, to carry out all of the provisions of the APA and any related agreements or instruments; to issue, execute, deliver, file, and record, as appropriate, the documents evidencing and consummating the APA and any related agreements or instruments; to take any and all actions contemplated by the APA, any related agreements or instruments, or this Order; and to issue, execute, deliver, file, and record, as appropriate, such other contracts, instruments, releases, indentures, mortgages, deeds, bills of sale, assignments, leases, or other agreements or documents and to perform such other acts and execute and deliver such other documents, as are consistent with, and necessary, desirable or appropriate to implement, effectuate, and consummate, the APA,

any related agreements or instruments, and this Order and the transactions contemplated thereby and hereby, all without further application to, or order of, the Court or further action by their respective directors, officers, managers, employees, members, agents, representatives, and attorneys, and with like effect as if such actions had been taken by unanimous action of the respective directors, officers, managers, employees, members, agents, representatives, and attorneys of such entities. The secretary or any assistant secretary of the Debtors shall be, and hereby is, authorized to certify or attest to any of the foregoing actions (but no such certification or attestation shall be required to make any such action valid, binding, and enforceable). The Debtors and Purchaser are further authorized and empowered to cause to be filed with the secretary of state of any state or other applicable officials of any applicable Governmental Authority at Purchaser's sole expense any and all certificates, agreements, or amendments necessary or appropriate to effectuate the transactions contemplated by the APA, any related agreements and this Order, and all such other actions, filings, or recordings as may be required under appropriate provisions of the applicable laws of all applicable Governmental Authorities or as any of the officers of the Debtors may determine are necessary or appropriate. The execution of any such document or the taking of any such action shall be, and hereby is, deemed conclusive evidence of the authority of such person to so act. Without limiting the generality of the foregoing, this Order shall constitute all approvals and consents, if any, required by the corporate laws of the states of formation of each Debtor and all other applicable business, corporation, trust, and other laws of the applicable Governmental Authorities with respect to the implementation and consummation of the APA, any related agreements or instruments and this Order, and the transactions contemplated thereby and hereby.

12. To the fullest extent permitted by law, effective as of the Closing, (a)(i) the transfer of the Purchased Assets to Purchaser, and (ii) the sale of the Purchased Assets to Purchaser, shall constitute a legal, valid, and effective transfer of the Purchased Assets notwithstanding any requirement for approval or consent by any Person and shall vest Purchaser, with all right, title, and interest of the Debtors in and to the Purchased Assets, free and clear of all Liens of any kind (other than the Permitted Liens and Assumed Liabilities) pursuant to section 363(f) of the Bankruptcy Code, and (b) the assumption of the Assumed Liabilities by Purchaser shall constitute a legal, valid and effective delegation and assignment of all Assumed Liabilities to Purchaser, and shall divest the Debtors of all liability with respect to any Assumed Liabilities. Unless otherwise agreed to by the Debtors and Purchaser, the Closing shall be no later than February 10, 2023 (subject to the satisfaction or waiver of the conditions to the Closing set forth in Article VI of the APA). For the avoidance of doubt, Purchaser shall be responsible for performing under the Assigned Contracts in accordance with the provisions of the Assigned Contracts.

13. The sale of the Purchased Assets is not subject to avoidance pursuant to section 363(n) of the Bankruptcy Code.

14. At the Closing, the Debtors shall be, and hereby are, authorized, empowered, and directed, pursuant to sections 105, 363(b), and 365 of the Bankruptcy Code, to transfer and sell any such Purchased Assets, including the Assigned Contracts, to Purchaser. The sale of the Purchased Assets shall vest Purchaser, with all right, title and interest of the Debtors to the Purchased Assets, free and clear of any and all Liens (other than the Permitted Liens and Assumed Liabilities) with all such Liens to attach only to the proceeds of the Sale with the same priority, validity, force, and effect, if any, as they have as of the Closing in or against the Purchased Assets, subject to all claims and defenses the Debtors may possess with respect thereto. Upon the Closing,

all such sale proceeds shall be directly remitted to escrow and deposited into an interest-bearing account. Within three (3) business days following the Closing, the Debtors shall cause all such net sale proceeds to be distributed to Lender without further notice, order, or hearing. Upon agreement of the Debtors and the Lender, the foregoing requirement to deposit funds into escrow may be waived and sale proceeds may be paid directly to the Lender (pursuant to instructions provided by Lender) at the Closing.

15. Following the Closing, no holder of any Liens in the Purchased Assets (other than the Permitted Liens and Assumed Liabilities) shall interfere with Purchaser's use and enjoyment of the Purchased Assets based on or related to such Liens or any actions that the Debtors may take in their Chapter 11 Cases, and no person shall take any action to prevent, interfere with or otherwise enjoin consummation of the transactions contemplated in or by the APA or this Order; provided however, and for avoidance of doubt, this provision shall not impact any party's right of appeal.

16. The provisions of this Order authorizing the sale of the Purchased Assets free and clear of Liens (other than the Permitted Liens and Assumed Liabilities) shall be self-executing, and neither the Debtors nor Purchaser shall be required to execute or file releases, termination statements, assignments, consents, or other instruments to effectuate, consummate, and implement the provisions of this Order. However, the Debtors and Purchaser and each of their respective officers, employees, and agents are hereby authorized and empowered to take all actions and execute and deliver any and all documents and instruments that either the Debtors or Purchaser deem necessary, desirable or appropriate to implement and effectuate the terms of the APA and this Order, including amendments to the APA.

17. Except as otherwise expressly provided in the APA, on or before the Closing, the Debtors' creditors are authorized and directed to execute such documents and take all other actions as may be necessary to release, effective as of the Closing any Liens (other than the Permitted Liens and Assumed Liabilities) of any kind against the Purchased Assets, as such Liens may have been recorded or may otherwise exist. Except as expressly provided in the APA, if any Person that has filed financing statements or other documents or agreements evidencing any Liens in or against the Purchased Assets (other than the Permitted Liens and Assumed Liabilities) shall not have delivered to the Debtors prior to the Closing after request therefor, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, or releases of all such Liens that the Person has with respect to the Purchased Assets, effective as of the Closing, the Debtors and Purchaser are hereby authorized to execute at Purchaser's sole expense such statements, instruments, releases, and other documents on behalf of the Person with respect to such Purchased Assets prior to the Closing, and Purchaser is authorized to file such documents after Closing. Notwithstanding the foregoing, any holders of Liens shall retain their rights and interests against any sale proceeds as provided for in this Order.

18. Purchaser shall be authorized, as of the Closing, to operate under any license, permit, approval, certificate of occupancy, authorization, operating permit, registration, plan and the like of any Governmental Authority relating to the Purchased Assets or held by the Debtors, and to the greatest extent available under applicable law, all such licenses, permits, approvals, certificates of occupancy, authorizations, operating permits, registrations, plans and the like of any Governmental Authority are deemed to have been, and hereby are, deemed to be transferred to Purchaser, as of the Closing.

19. All of the Debtors' interests in the Purchased Assets to be acquired by Purchaser under the APA shall be, as of the Closing and upon the occurrence of the Closing, transferred to and vested in Purchaser. Upon the occurrence of the Closing, this Order shall be considered and shall constitute for any and all purposes a full and complete general assignment, conveyance, and transfer of the Debtors' interest in the Purchased Assets under the APA and/or a bill of sale or assignment transferring good and marketable, indefeasible title and interest in the Purchased Assets to Purchaser.

20. Except as expressly provided in the APA, by virtue of the consummation of transactions contemplated by the APA, Purchaser is not assuming nor shall it be in any way liable or responsible, as a successor or otherwise, for any liabilities, debts, or obligations of the Debtors in any way whatsoever relating to or arising from the Debtors' ownership or use of the Purchased Assets prior to the Closing, or any liabilities calculable by reference to the Debtors or their operations or the Purchased Assets, or relating to continuing or other conditions existing on or prior to the Closing, which liabilities, debts, and obligations are hereby extinguished insofar as they may give rise to liability, successor or otherwise, against Purchaser or any Affiliate of Purchaser.

21. Except as otherwise expressly provided in the APA, all Persons presently or on or after the Closing in possession of some or all of the Purchased Assets are directed to surrender possession of the Purchased Assets to Purchaser on the Closing or at such time thereafter as Purchaser may request. For avoidance of doubt, a dispute over ownership of Purchased Assets may be subject to further proceedings relating to such dispute.

22. Subject to the terms of the APA and the occurrence of the Closing, the assumption by the Debtors of the Assigned Contracts and the sale and assignment of such agreements and

unexpired leases to Purchaser, as provided for or contemplated by the APA, be, and hereby is, authorized and approved pursuant to sections 363 and 365 of the Bankruptcy Code.

23. The Assigned Contracts shall be deemed valid and binding and in full force and effect and assumed by the Debtors and sold and assigned to Purchaser at the Closing, pursuant to sections 363 and 365 of the Bankruptcy Code, subject only to the payment of the Cure Costs by Purchaser.

24. Upon the Closing, in accordance with sections 363 and 365 of the Bankruptcy Code, Purchaser shall be fully and irrevocably vested in all right, title, and interest in and to the Assigned Contracts. The Debtors shall reasonably cooperate with, and take all actions reasonably requested by, Purchaser to effectuate the foregoing.

25. Pursuant to sections 365(b)(1)(A) and (B) of the Bankruptcy Code, and except as otherwise provided in this Order, within seven (7) days of the Closing, Purchaser shall pay or cause to be paid to the non-debtor parties to the Assigned Contracts the requisite Cure Costs, if any, set forth on the notice filed with the Court on January 12, 2023 [Docket No. 227] (the “Assumption Notice”), except to the extent that a Cure Cost was amended on the record of the Sale Hearing, agreed to between the non-Debtor party to the Assigned Contracts and the Purchaser, or determined by Court order, as the case may be, following the assumption and assignment thereof. The Cure Costs are hereby fixed at the amounts set forth on the Assumption Notice, as set forth on the record of the Sale Hearing, as otherwise agreed between the non-Debtor party to the Assigned Contracts and the Purchaser, or as determined by Court order, as the case may be, and the non-debtor party to the Assigned Contracts is forever bound by such Cure Costs applicable to such Assigned Contract.

26. All defaults or other obligations under the Assigned Contracts arising prior to the Closing (without giving effect to any acceleration clauses, assignment fees, increases, advertising rates, or any other default provisions of the kind specified in section 365(b)(2) of the Bankruptcy Code) shall be deemed cured by payment of the Cure Costs and the counterparty to the Assigned Contracts shall be forever barred and estopped from asserting or claiming against the Debtors or Purchaser that any amounts are due or other defaults exist under such Assigned Contracts as of the date of the assignment of such Assigned Contracts.

27. Any provision in the Assigned Contracts that purports to declare a breach, default, or payment right as a result of an assignment or a change of control in respect of the Debtors is unenforceable, and the Assigned Contracts shall remain in full force and effect, subject only to payment of the appropriate Cure Costs, if any. No sections or provisions of the Assigned Contracts that purport to provide for additional payments, penalties, charges, or other financial accommodations in favor of the non-debtor party to the Assigned Contracts shall have any force and effect with respect to the sale transaction and assignments authorized by this Order, and such provisions constitute unenforceable anti-assignment provisions under section 365(f) of the Bankruptcy Code and/or are otherwise unenforceable under section 365(e) of the Bankruptcy Code and no assignment of the Assigned Contracts pursuant to the terms of the APA shall in any respect constitute a default under the Assigned Contracts. The non-debtor party to the Assigned Contracts shall be deemed to have consented to such assignment under section 365(c)(1)(B) of the Bankruptcy Code, and Purchaser shall enjoy all of the Debtors' rights and benefits under each such Assigned Contracts as of the applicable date of assumption without the necessity of obtaining such non-debtor party's written consent to the assumption or assignment thereof.

28. The Debtors and Purchaser have satisfied all requirements under sections 365(b)(1) and 365(f)(2) of the Bankruptcy Code to provide adequate assurance of future performance under the Assigned Contracts.

29. The Debtors and their estates shall have no liability for any claims accruing from and after the Closing under any of the Assigned Contracts, pursuant to and in accordance with section 365(k) of the Bankruptcy Code.

30. Pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code, the party to the Assigned Contracts shall have no claim against Purchaser relating to any assignment fee, default, breach or claim or pecuniary loss, or condition to assignment, arising under or related to the Assigned Contracts existing as of the Closing or arising by reason of the Closing, except for any amounts that are Assumed Liabilities, including Cure Costs, being assumed by Purchaser under the APA.

31. In the event that the Sale does not close, the Assigned Contracts shall not be assumed by virtue of this Order and shall remain subject to further administration in the Debtors' Chapter 11 Cases.

32. Each and every federal, state, and local governmental agency or department is hereby authorized to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA and this Order. This Order and the APA shall be binding upon and govern the acts of all such federal, state, and local governmental agencies and departments, including any filing agents, filing officers, title agents, recording agencies, secretaries of state, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any

documents or instruments, or who may be required to report or insure any title in or to the Purchased Assets.

33. To the extent permitted by section 525 of the Bankruptcy Code, no Governmental Authority may revoke or suspend any permit or license relating to the operation of the Purchased Assets sold, transferred, or conveyed to Purchaser on account of the filing or pendency of these Chapter 11 Cases or solely the consummation of the transactions contemplated by the APA.

34. Purchaser has not assumed or is otherwise not obligated for any of the Debtors' liabilities other than the Assumed Liabilities as set forth in the APA, and Purchaser has not purchased any of the Debtors' assets expressly excluded from the Purchased Assets pursuant to the APA (the "Excluded Assets"). Consequently, all Persons, Governmental Units (as defined in sections 101(27) and 101(41) of the Bankruptcy Code) and all holders of Liens (other than the Permitted Liens) based upon or arising out of liabilities retained by the Debtors may not take any action against Purchaser or the Purchased Assets to recover any Liens or on account of any liabilities of the Debtors other than Assumed Liabilities pursuant to the APA. All persons holding or asserting any Liens in the Excluded Assets may not assert or prosecute such Liens or any cause of action against Purchaser or the Purchased Assets for any liability associated with the Excluded Assets.

35. As a result of the transactions contemplated by the APA, Purchaser is not a "successor" to the Debtors or their estates by reason of any theory of law or equity, and Purchaser shall not assume, or be deemed to assume, or in any way be responsible for any liability or obligation of any of the Debtors and/or their estates including, but not limited to, any bulk sales law, successor liability, or similar liability except for the assumption of the Assumed Liabilities and as expressly provided in the APA. Except for the Assumed Liabilities assumed pursuant to

the APA, neither the transfer of the Purchased Assets to Purchaser nor the fact that Purchaser is using any of the Purchased Assets previously operated by the Debtors, will cause Purchaser or any of its Affiliates, to be deemed a successor in any respect to the Debtors' business within the meaning of any foreign, federal, state or local revenue, pension, ERISA, tax, labor, employment, environmental, or other law, rule or regulation (including, without limitation, filing requirements under any such laws, rules or regulations), or under any products liability law or doctrine with respect to the Debtors' liability under such law, rule or regulation or doctrine.

36. Further, except for the Assumed Liabilities and as provided in the APA, transfer of title of the Purchased Assets shall be free and clear of any Claims pursuant to any successor or successor-in-interest liability theory, including the following: (a) any employment or labor agreements, (b) all deeds of trust and security interests, (c) any pension or medical benefit plan of the Debtors, compensation or other employee benefit plan of the Debtors, welfare, agreements, practices and programs, (d) any other employee, worker's compensation, occupational disease or unemployment or temporary disability related claim, including, without limitation, Claims that might otherwise arise under or pursuant to (i) the Employee Retirement Income Security Act of 1974, as amended, (ii) the Fair Labor Standards Act, (iii) Title VII of the Civil Rights Act of 1964, (iv) the Federal Rehabilitation Act of 1973, (v) the National Labor Relations Act, (vi) the Worker Adjustment and Retraining Act of 1988, (vii) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act, as amended, (viii) the Americans with Disabilities Act of 1990, (ix) the Consolidated Omnibus Budget Reconciliation Act of 1985 (unless otherwise provided for under such statute and any regulations promulgated thereunder), (x) state discrimination laws, (xi) state unemployment compensation laws or any other similar state laws, or (xii) any other state or federal benefits or Claims relating to any employment with the Debtors

or any predecessors, (e) environmental or other Claims or Liens arising from existing conditions prior to the Closing (including, without limitation, the presence of hazardous, toxic, polluting or contaminating substances or waste) that may be asserted on any basis, including, without limitation, under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601, *et seq.*, or other state or federal statute, (f) any bulk sales or similar law, (g) any Tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended, and (h) any and all theories of successor liability, including any theories on successor products liability grounds or otherwise.

37. Except to the extent expressly included in the Assumed Liabilities or provided in the APA, Purchaser and its affiliates, shall have no liability, obligation, or responsibility under the WARN Act (29 U.S.C. §§ 210 *et seq.*) or the Comprehensive Environmental Response Compensation and Liability Act, or any foreign, federal, state or local labor, employment, or environmental law solely by virtue of Purchaser's purchase of the Purchased Assets or its assumption of the Assumed Liabilities.

38. Except to the extent expressly included in the Assumed Liabilities or provided in the APA, pursuant to sections 105 and 363 of the Bankruptcy Code, all Persons including, but not limited to, the Debtors, all debt holders, equity security holders, the Debtors' employees or former employees, Governmental Authorities, lenders, parties to or beneficiaries under any benefit plan, trade and other creditors asserting or holding a Lien of any kind or nature whatsoever against, in, or with respect to any of the Debtors or the Purchased Assets (other than the Permitted Liens and Assumed Liabilities), arising under or out of, in connection with, or in any way relating to the Debtors, the Purchased Assets, the operation of the Debtors' businesses prior to the Closing, or the transfer of the Purchased Assets to Purchaser in accordance with the APA and this Order, shall be

forever barred and estopped from asserting, prosecuting, or otherwise pursuing such Lien, including assertion of any right of setoff or subrogation, and enforcement, attachment, or collection of any judgment, award, decree, or order, against Purchaser or the Purchased Assets.

39. Without limiting the generality of the foregoing, except to the extent expressly included in the Assumed Liabilities, Purchaser shall not assume or be obligated to pay, perform or otherwise discharge any workers' compensation debts, obligations, and liabilities of the Debtors arising pursuant to state law or otherwise. This Order is intended to be all inclusive and shall encompass, but not be limited to, workers' compensation Claims or suits of any type, whether now known or unknown, whenever incurred or filed, which have occurred or which arise from work-related injuries, diseases, death, exposures, intentional torts, acts of discrimination, or other incidents, acts, or injuries prior to the Closing, including, but not limited to, any and all workers' compensation Claims filed or to be filed, or any reopening of such Claims, by or on behalf of any of the Debtors' current or former employees, persons on laid-off, inactive or retired status, or their respective dependents, heirs or assigns, as well as any and all premiums, assessments, or other obligations of any nature whatsoever of the Debtors relating in any way to workers' compensation liability, except as otherwise specifically set forth in the APA.

40. Nothing in this Order or the APA releases, nullifies, precludes or enjoins the enforcement of any police or regulatory liability to a governmental unit that any entity would be subject to as the post-sale owner or operator of property after the date of entry of this Order. Nothing in this Order or the APA authorizes the transfer or assignment of any governmental (a) license, (b) permit, (c) registration, (d) authorization, or (e) approval, or the discontinuation of any obligation thereunder, without compliance with all applicable legal requirements and approvals under police or regulatory law. Nothing in this Order divests any

tribunal of any jurisdiction it may have under police or regulatory law to interpret this Order or to adjudicate any defense asserted under this Order.

41. Subject to the terms of the APA, the APA and any related agreements and/or instruments may be waived, modified, amended, or supplemented by agreement of the Debtors and Purchaser, without further action or order of the Court; provided further, that any such waiver, modification, amendment, or supplement is not materially adverse to the Debtors and substantially conforms to, and effectuates, the APA and any related agreements and/or instruments and this Order and not contrary to the terms and condition of the post-petition financing provided by Lender in these Chapter 11 Cases; provided further, that the Debtors shall provide the Lender with advance written notice of any such modification, amendment, or supplement.

42. The failure specifically to include any particular provisions of the APA or any related agreements or instruments in this Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court, the Debtors and Purchaser that the APA and any related agreements and instruments are authorized and approved in their entirety with such amendments thereto as may be made by the parties in accordance with this Order prior to Closing, and each such provision of the APA shall be enforceable by or against each of the Parties thereto.

43. No bulk sale law or any similar law of any state or other jurisdiction shall apply in any way to the sale and the transactions contemplated by the APA.

44. This Order and the APA shall be binding upon, enforceable against, and govern the acts of all Persons including, without limitation, the Debtors and Purchaser, their respective successors, and permitted assigns, including, without limitation, any chapter 11 trustee hereinafter appointed for the Debtors' estates, any committee subsequently appointed in these Chapter 11 Cases or any trustee appointed in a chapter 7 case if these cases are converted from chapter 11, all

creditors of any Debtor (whether known or unknown), filing agents, filing officers, title agents, recording agencies, secretaries of state, and all other Persons who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title in or to the Purchased Assets.

45. The Debtors and their estates, on the one hand, and Purchaser, on the other hand, hereby release each other from any and all claims relating to the Texas business, including claims that may or could have been asserted including claims under chapter 5 of the Bankruptcy Code, except for such claims that are set forth in or arise from the APA and this Order.

46. Notwithstanding Bankruptcy Rules 6004, 6006, and 7062, this Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing. In the absence of any Person obtaining a stay pending appeal, the Debtors and Purchaser are free to close under the APA at any time, subject to the terms of the APA. In the absence of any Person obtaining a stay pending appeal, if the Debtors and Purchaser close under the APA, Purchaser shall be deemed to be acting in “good faith” and shall be entitled to the protections of section 363(m) of the Bankruptcy Code as to all aspects of the transactions under and pursuant to the APA if this Order or any authorization contained herein is reversed or modified on appeal.

47. Pursuant to the APA, the leases for the Sulphur Springs, TX and Tyler, TX locations shall be assumed and assigned to the Purchaser at closing in accordance with 11 U.S.C. § 365. The Debtors have paid all 2022 taxes due for the foregoing leases. The Debtors or the Purchaser shall pay the following cure amounts (x) for the Sulphur Springs, TX lease: \$2,000 in pre-petition rent, and (y) for the Tyler, TX lease: \$6,500 rent. Upon closing and assumption and assignment of the

leases,—satisfaction of the foregoing cure costs, the Purchaser shall be liable for all future obligations under the leases.

48. The Debtors are equitable owners of the real property located in Longview, TX (the “Longview Property”), title for which is to be transferred by a deed (the “Longview Deed”) upon payment of a promissory note (the “Ruyle Note”). The Longview Property is a Purchased Asset and is being sold and transferred to the Purchaser pursuant to the terms of the APA and this Order. In connection with the purchase of the Longview Property, the Ruyle Note has an outstanding balance of approximately \$303,086.10 plus accrued interest from January 1, 2023 at \$59.60 per day (as of January 28, 2023) and for which performance of the Debtors is secured by the Longview Deed a copy of which is held in escrow by Neal Smith, Esq. Prior to the closing of the APA, the Ruyle Family Trust (the “Trust”) and Neal Smith, Esq. agree to transfer the Longview Deed and execute any and all documents which may be reasonably required by the Debtors or the Purchaser (including any title insurer issuing title insurance purchased by Purchaser) for the sale of the Longview Property to Purchaser, with all such documents being held in escrow by Potter Anderson & Corroon LLP pending the closing of the APA and satisfaction of the Ruyle Note. At the closing of the APA, the Longview Deed shall be delivered to the Purchaser upon delivery by the Debtors to the Ruyle Family Trust of proceeds equal the outstanding balance of \$303,086.10 due under the Ruyle Note as of January 28, 2023 plus accrued interest from January 1, 2023 per diem of \$59.60 to the closing of the APA. Following receipt of all necessary documentation, the Ruyle Note shall be satisfied in full at the closing of the APA.

49. Subject to the Purchaser’s ability to update Schedule 3.10(e) of the APA up to and including the Closing Date, the Master Lease Agreement, dated February 12, 2020, with Toyota Industries Commercial Finance, Inc. (“Toyota”) and the three forklifts leased thereby (#8FGU32-

C0087, #8FGI32-C0185, #8FGU32-0186) and the Equipment Lease Agreement, dated February 10, 2022, with Toyota for one forklift (#6BWS20-10524) shall be assumed and assigned to the Purchaser and the Cure Costs to be paid by the Purchaser under such agreements shall be \$5,249.99 and \$864.56, respectively, subject to Toyota's approval of the credit application submitted by the Purchaser; provided that Toyota shall have (i) provided the Purchaser with a copy of its form credit application no later than 10:00 a.m. on February 1, 2023, and (ii) completed the processing of the Purchaser's credit application by no later than 4:00 p.m. on February 7, 2023; provided further that in the event Toyota fails to comply with either (i) or (ii) above, the Purchaser's credit application shall be deemed approved for purposes of the assumption and assignment of the above described leases. In the event Toyota has complied with (i) and (ii) above, but has not approved the Purchaser's credit application by 4:00 p.m. on February 7, 2023, the issue of whether the leases may be assumed and assigned to the Purchaser in compliance with section 365 of the Bankruptcy Code without an approved credit application shall be decided by the Court at a hearing to be held on February 8, 2023, at 11:00 a.m.

50. The automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to implement the terms and conditions of the APA and the provisions of this Order.

51. This Court shall retain exclusive jurisdiction to enforce the terms and provisions of this Order and the APA in all respects and to decide any disputes concerning this Order, the APA, or the rights and duties of the parties hereunder or thereunder or any issues relating to the APA and this Order including, but not limited to, the interpretation of the terms, conditions and provisions hereof and thereof, the status, nature and extent of the Purchased Assets and the Assigned Contracts, and all issues and disputes arising in connection with the relief authorized

herein, inclusive of those concerning the transfer of the Purchased Assets free and clear of all Liens (except Permitted Liens and Assumed Liabilities).

Dated: February 2nd, 2023
Wilmington, Delaware

BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

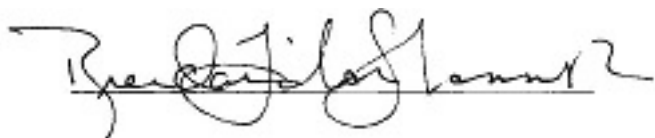
A handwritten signature in black ink, appearing to read "Brendan L. Shannon", written over a horizontal line.

EXHIBIT A

Asset Purchase Agreement

ASSET PURCHASE AGREEMENT

BY AND AMONG

MAGNEGAS WELDING SUPPLY – SOUTH, LLC

TARONIS FUELS, INC.

AND

MGP HOLDINGS III CORP.

DATED AS OF JANUARY [], 2023

ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (the “**Agreement**”) is entered into as of January [], 2023, by and among MGP Holdings III Corp., a Delaware corporation (“**Buyer**”), MagneGas Welding Supply – South, LLC, a Texas limited liability company (“**Seller**”), and Taronis Fuels, Inc., a Delaware corporation (“**Parent**”, and together with Seller, the “**Seller Parties**”). Buyer and Seller Parties may sometimes be referred to herein individually as a “**Party**” and collectively as the “**Parties**”.

RECITALS:

A. On November 11, 2022, Parent, Seller and certain of their affiliates filed voluntary petitions for relief, Case No. 22-11121 (BLS) (the “**Bankruptcy Cases**”) under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Delaware (the “**Court**”).

B. Upon the terms and conditions set forth in this Agreement and pursuant to Sections 363 and 365 of the Bankruptcy Code, Seller desires to sell, and Buyer desires to purchase, substantially all of the assets used or useful in the industrial gas and welding supply distribution business operated by Seller in Texas, Louisiana, and Indiana (the “**Business**”).

C. Buyer and Seller desire to consummate the transactions contemplated herein as promptly as practicable after the entry of the Sale Order by the Court.

D. Parent owns all of the issued and outstanding equity interests in Seller and will, directly or indirectly, derive economic benefit from the Closing (as defined herein) of the transactions contemplated herein.

In consideration of the foregoing recitals and the premises and the representations, warranties, and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as set forth below:

ARTICLE I. DEFINED TERMS

Section 1.01 Defined Terms. Capitalized terms used in this Agreement and not otherwise defined herein have the meanings ascribed to them in Annex A, Annex B-1 or Annex B-2 hereto, and shall be applicable to the singular and the plural forms of such terms, except as otherwise specifically provided herein.

ARTICLE II. TRANSACTION

Section 2.01 Purchase and Sale of the Purchased Assets. In reliance upon the representations and warranties and subject to the terms and conditions set forth in this Agreement and the Sale Order, at the Closing, Buyer agrees to purchase and acquire from Seller, Parent or one of Parent’s Affiliates, as applicable, and Seller and Parent agree to sell, grant, transfer, assign, convey and deliver to Buyer, and Parent agrees to cause its Affiliates, as applicable, to sell, grant, transfer, assign, convey and deliver to Buyer, for the consideration specified in this Article II, all of the respective rights, title and interests of Seller, Parent or one of Parent’s Affiliates, as applicable, in and to all of the Purchased Assets, free and clear of all Liens other than Permitted Liens. Notwithstanding the foregoing, the Purchased Assets shall not include any of the Excluded Assets, including those Excluded Assets described on Schedule 2.01. Buyer, in its sole discretion, shall have the right to amend, supplement or update Schedule 2.01 at any time

on or prior to the Closing, other than with respect to any Containers (including, for the avoidance of doubt, (i) the California MagneGas Cylinders and (ii) the Texas MagneGas Cylinders.

Section 2.02 Assumption of Liabilities.

(a) At the Closing, Buyer shall assume and agree to pay, discharge or perform, as appropriate, when due only those Liabilities and obligations under the Assumed Contracts, including any Cure Costs (the “**Assumed Liabilities**”).

(b) Notwithstanding Section 2.02 or any other provision of this Agreement, Buyer is not assuming under this Agreement or any other agreement or instrument entered into in connection herewith any Liability of any Seller Party that is not specifically identified as an Assumed Liability under Section 2.02 (each, an “**Excluded Liability**”), which for the avoidance of doubt shall include all accrued expenses and accounts payable of Seller arising out of the operation of the Business prior to the Closing other than Cure Costs (the “**Accounts Payable**”). The Excluded Liabilities are, and at all times shall remain, the obligation of Seller Parties. The Parties acknowledge and agree that disclosure of any obligation or Liability on any Schedule to this Agreement shall not create an Assumed Liability or other Liability of Buyer, except where such disclosed obligation or Liability has been expressly assumed by Buyer as an Assumed Liability in accordance with the provisions of Section 2.02 hereof. “Assumed Liabilities” shall in no event include the Excluded Liabilities or any Liability to the extent resulting from or arising out of the ownership, use, operation, removal or disposal of any Excluded Asset.

Section 2.03 Purchase Price. In consideration for the sale of the Purchased Assets to Buyer pursuant to Section 2.01, Buyer shall pay to Seller an aggregate purchase price of \$10,091,066.00 (the “**Purchase Price**”).

Section 2.04 Deposit; Delivery and Manner of Payment of Purchase Price.

(a) On or before the deadline set forth in the Bidding Procedures Order, Buyer deposited with the Escrow Agent \$959,106.60 (the “**Deposit**”) pursuant to the terms of the Bidding Procedures Order. The Deposit shall be credited to the Purchase Price if the Closing occurs, or otherwise distributed pursuant to the Bidding Procedures Order or other order of the Court.

(b) At the Closing, on the terms and subject to the conditions set forth in this Agreement, Buyer shall pay to Seller by wire transfer of immediately available funds to the bank account or accounts designated by Seller prior to the Closing, an aggregate amount equal to the Purchase Price, less the Deposit.

Section 2.05 Closing. The closing of the transactions contemplated by this Agreement (the “**Closing**”) shall take place through an exchange of consideration and documents using wire transfers, overnight courier service, electronic mail and/or facsimile transmission at such a time as mutually agreed upon by the Parties following satisfaction or waiver of the conditions to the Closing set forth in Article VI hereof, or such other time, date and place that the Parties may agree (such date of the Closing to be referred to herein as the “**Closing Date**”), provided that the Closing shall be effective for Tax purposes as of 12:01 am eastern time on the Closing Date. Notwithstanding the foregoing, the Closing shall not occur unless and until the Court shall have entered the Sale Order, transferring the Purchased Assets free and clear of all Liens (except Permitted Liens) and including that Buyer is a good faith purchaser entitled to protections of 363 (m) and (n), on or prior to February 1, 2023, which shall include a waiver of the stay in Bankruptcy Rules 6004(h), 6006(d) and Local Rule 6004-1, and such Sale Order shall be a Final Order. The Closing must occur on or before February 10, 2023 (subject to the satisfaction or waiver of the conditions to the Closing set forth in Article VI hereof) or such later date as may be agreed to by the Parties.

Section 2.06 Deliveries of Seller Parties at Closing. At the Closing, each Seller Party, as applicable, shall deliver, or cause to be delivered, to Buyer the deliverables set forth on Annex B-1.

Section 2.07 Deliveries of Buyer at Closing. At the Closing, Buyer shall deliver, or cause to be delivered, to Seller and the other applicable Persons the deliverables set forth on Annex B-2.

Section 2.08 Allocation of Certain Items. With respect to certain expenses incurred in the operations of Seller, the following allocations shall be made between Seller Parties, on the one hand, and Buyer, on the other, to the extent applicable with respect to the Purchased Assets:

(a) Real and ad valorem property Taxes on the Purchased Assets shall be apportioned at the Closing based upon the amounts set forth in the current tax bills therefor and the number of days in the taxable period prior to the Closing Date and in the taxable period including and following the Closing Date; provided that Buyer shall not be responsible for any late fees or additional charges if Seller elected to pay such Taxes in installments; and

(b) Rents, utilities, water and sewer charges shall be apportioned based upon the number of days occurring prior to the Closing Date and including and following the Closing Date during the billing period for each such charge.

Appropriate cash payments by Buyer, on the one hand, or Seller Parties, on the other, as the case may be, shall be made hereunder from time to time as soon as reasonably practicable after the facts giving rise to the obligation for such payments are known in the amounts necessary to give effect to the allocations provided for in this Section 2.08.

Section 2.09 Purchase Price Allocation. The Purchase Price shall be allocated in accordance with Section 1060 of the Code on the basis of Closing Date financial statements and Purchased Asset counts conducted on or about the Closing Date, adjusted to reflect the actual results of operations of the Business through the Closing Date (the "**Purchase Price Allocation**"). For purposes of determining the Purchase Price Allocation, (i) Accounts Receivable (as defined herein) will be valued at their face amount, (ii) inventory will be valued at the lower of cost or market value, and (iii) Fixed Assets will be valued based on appraisals prepared by independent third parties or valued consistent with the valuation techniques and practices of Buyer. The parties agree to adopt and abide by the allocations provided for herein in all Tax filings, and agree to take no position inconsistent therewith.

Section 2.10 Non-Assignable Assets. Nothing in this Agreement shall be construed as an attempt by any Seller Party to assign to Buyer pursuant to this Agreement any contract, license or permit, franchise, claim, right, title or asset included in the Purchased Assets that is not assignable under the Bankruptcy Code without the consent or approval of any other Person, unless such consent or approval shall have been obtained (a "**Non-Assignable Asset**"). To the extent that any Required Consent in respect of a Non-Assignable Asset shall not have been obtained on or before the Closing Date, Seller Parties shall (if requested by Buyer) use commercially reasonable efforts to obtain any such Required Consent, and Seller Parties shall cooperate with Buyer in any commercially reasonable arrangement to provide Buyer with the interest of such Party in the benefits under such Non-Assignable Asset; provided that Buyer shall undertake to pay or satisfy the corresponding Liabilities under the terms of such Non-Assignable Asset to the extent that Buyer would have been responsible therefor if such Required Consent had been obtained.

ARTICLE III. REPRESENTATIONS AND WARRANTIES OF SELLER PARTIES

Except as set forth in the Schedules to this Agreement, Seller represents and warrants to Buyer as follows:

Section 3.01 Binding Obligation; Authority.

(a) Assuming due authorization, execution, and delivery by Buyer to this Agreement and subject to the entry of the Sale Order, this Agreement constitutes the legal, valid, and binding obligation of each Seller Party.

(b) Subject to entry of the Sale Order, each Seller Party has all necessary power and authority to enter into this Agreement, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery by each Seller Party of this Agreement, the performance by each Seller Party of its obligations hereunder, and the consummation by each Seller Party of the transactions contemplated hereby have been duly authorized by all requisite corporate action on the part of each Seller Party.

Section 3.02 Organization; Power and Authority.

(a) Seller is a limited liability company duly organized, validly existing and in good standing under the law of the Texas. Parent is a corporation duly organized and validly existing under the laws of the State of Delaware, with full corporate power and authority to conduct its business as now being conducted, including the ownership of Seller and, subject to entry of the Sale Order, has all requisite corporate power and authority to execute and perform this Agreement, the Ancillary Documents, and the transactions contemplated hereby and thereby.

(b) Seller has all necessary limited liability company power and authority to carry on the Business as now conducted and to own or lease all of the properties and assets owned or leased by it. Subject to entry of the Sale Order, Seller has all requisite limited liability company power and authority to execute and perform this Agreement, the Ancillary Documents, and the transactions contemplated hereby and thereby. Parent has full corporate power and authority to conduct its business as now being conducted, including the ownership of Seller and, subject to entry of the Sale Order, has all requisite corporate power and authority to execute and perform this Agreement, the Ancillary Documents, and the transactions contemplated hereby and thereby.

(c) This Agreement and the transactions contemplated hereby have been duly authorized and approved by all requisite corporate action of each Seller Party, and this Agreement has been duly executed and delivered by each Seller Party and, subject to entry of the Sale Order, is the legal, valid and binding obligation of each Seller, enforceable in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency or similar laws of general application relating to or affecting the enforcement of creditors' rights and (ii) general principles of equity relating to the availability of equitable remedies. Subject to entry of the Sale Order, no other proceedings are necessary to authorize this Agreement and the transactions contemplated hereby, or the performance or compliance by each Seller Party with any of the terms, provisions or conditions hereof.

(d) Parent is the sole record and beneficial owner of all of the issued and outstanding equity of Seller, and no other Person owns any equity or ownership interests in Seller and no other Person has any right to become an owner of any stock or other equity interest of Seller. Seller does not own any equity or ownership interests in any person or any rights thereto.

Section 3.03 No Conflicts; Consents. The execution, delivery and performance by Seller Parties of this Agreement, and the consummation of the transactions contemplated hereby, do not and will not: (a) result in a violation or breach of any provision of the organizational documents of any Seller Party; (b) result in a violation or breach of any provision of any law or governmental order applicable to any Seller

Party; or (c) result in a violation or breach of any provision of any contract to which any Seller Party is a party or by which any Seller Party may be bound or affected. Subject to the entry of the Sale Order, neither Seller nor Parent is required to give any notice to, make any filing with, or obtain any authorization, consent or approval of any Governmental Authority or other Person in order for Seller or Parent or any of its Affiliates, as applicable, to sell and transfer the Purchased Assets to Buyer pursuant to this Agreement. The consents, approvals and notices set forth on Schedule 3.03 will be required prior to the Closing Date (the “**Required Consents**”).

Section 3.04 Assets.

(a) All material items of equipment, furniture, fixtures and other items of tangible personal property included in the Purchased Assets (“**Tangible Personal Property**”) are in good working order and operating condition and repair for the purposes for which they are used, reasonable wear and tear excepted.

(b) Seller Parties (or, with respect to the California MagneGas Cylinders, an Affiliate of Parent) have good and valid title to, or a valid leasehold interest in, the Tangible Personal Property included in the Purchased Assets, free and clear of Liens except for Permitted Liens.

(c) Other than the lease for Leased Real Property that is not being assumed by Buyer as part of the Purchased Assets, the Purchased Assets are sufficient for the continued conduct of the Business after the Closing in substantially the same manner as conducted prior to the Closing and constitute all of the rights, property and assets necessary to conduct the Business as currently conducted. Other than the lease for Leased Real Property that is not being assumed by Buyer as part of the Purchased Assets, none of the Excluded Assets are material to the Business.

(d) All of the Purchased Assets are in the possession of Seller, Parent or an Affiliate of Parent or Seller’s customers and, if in the possession of Seller’s customers, are held pursuant to binding agreements obligating each such customer to return or reimburse Seller for such assets. All material customer disputes relating to Seller’s right (or, with respect to the California MagneGas Cylinders, Parent’s or an Affiliate of Parent’s right) to collect total monthly cylinder and tank rental and/or lease charges billed to Seller’s customers, net of reductions made by reason of customer disputes have been investigated by Seller and adjustments have been made within a reasonable time to the cylinder records. To the best of Seller’s knowledge, Schedule 3.04(d) contains a list of the cylinders and tanks by size and type owned by Seller (or, with respect to the California MagneGas Cylinders, Parent or an Affiliate of Parent), indicating whether each item is dock stock or located at a customer site, which list is true and correct in all respects, including any and all customer deposits on such cylinder and tanks.

(e) Seller Parties have provided Buyer a detailed inventory subledger for Seller Parties as of a date that is not more than five Business Days prior to the date hereof. All of the inventory is of a good and merchantable quality usable or saleable in the ordinary course of business, subject to reasonable reserves for unsalable, obsolete and damaged inventory and shrinkage, consistent with historical amounts. The inventory consists of raw materials, components, parts, work-in-process, finished goods, and packaging, which has been purchased or manufactured in the ordinary course of business consistent with reasonably anticipated requirements of the Business. None of the inventory has been consigned by any Seller Party (that is, delivered but not sold or sold with an unlimited right of return) to any Person. All gas and hardgoods inventories of Seller Parties are usable in the ordinary course of the Business, and are good and merchantable and readily saleable in the ordinary course of the Business.

Section 3.05 Accounts Receivable. Except as set forth on Schedule 3.05, all of Seller’s accounts receivable (“**Accounts Receivable**”) arose in the ordinary course of the Business, are good and collectable within 120 days after the Closing Date, and such Accounts Receivable are not subject to any counterclaims or setoffs. Seller Parties have provided Buyer a detailed Accounts Receivable aging report

for Seller as of a date that is not more than five Business Days prior to the date hereof. No current customer of Seller has given notice (written or otherwise) that it intends to terminate or modify its relationship adversely with Seller.

Section 3.06 Real Estate.

(a) Schedule 3.06(a) contains a true and complete listing of all real property owned by Seller, Parent or an Affiliate of Parent and materially used in connection with the Business (the “**Ow ned Real Property**”). Seller, Parent or an Affiliate of Parent has fee simple title to all Ow ned Real Property, if any, free and clear of any Liens, except for Permitted Liens.

(b) Schedule 3.06(b) contains a true and complete listing of all real property leased by Seller, Parent or an Affiliate of Parent and materially used in connection with the Business (the “**Leased Real Property**”) and a list of all leases for each Leased Real Property involving annual payments of at least \$10,000.

Section 3.07 Intellectual Property.

(a) Schedule 3.07(a) lists (i) all Intellectual Property Registrations and (ii) all Intellectual Property Agreements that are material to the conduct of the Business (excluding shrink-wrap, click-wrap, or other similar agreements for commercially available off-the-shelf software). Schedule 3.07(a) contains a true and correct list of all cylinder neck rings and markings used in the Business and Seller Parties have the full right to use such neck rings and markings in the ordinary course of the Business. Schedule 3.07(a) also includes a list of all telephone and facsimile numbers used at any location used in the Business.

(b) Seller owns or has the right to use all Intellectual Property Assets and the Intellectual Property licensed to Seller under the Intellectual Property Agreements.

Section 3.08 Financial Statements. Seller has provided Buyer with copies of Seller’s financial statements for the year ended December 31, 2021 and for the interim period ended November 30, 2022, which financial statements fairly present in all material respects the financial condition of Seller as of the respective dates thereof and the results of the operations of Seller for the periods indicated.

Section 3.09 Taxes.

(a) Other than Parent filing annual reports with, and paying its franchise taxes to, the Secretary of State of the State of Delaware, all Tax Returns required to be filed by any Seller Party with respect to the Business for Tax periods ending on or after December 31, 2018 and prior to the date of this Agreement (taking into account any valid extensions) have been filed and were true, correct and complete in all material respects when filed.

(b) Other than Parent filing annual reports with, and paying its franchise taxes to, the Secretary of State of the State of Delaware, the Taxes of each Seller Party with respect to the Business shown as due and payable on such Tax Returns have been paid.

(c) There are no liens for Taxes on any Purchased Assets.

(d) No audit, examination or other legal proceeding by a Tax Authority is currently pending against any Seller Party with respect to the Tax Returns.

(e) All Taxes which any Seller Party is obligated to withhold from amounts owing to any employee, creditor or third party have been paid.

Section 3.10 Contracts.

(a) Seller has provided to Buyer copies the following contracts relating to the Business or Purchased Assets (the “**Material Contracts**”), which are set forth on Schedule 3.10(a):

(i) all contracts involving aggregate consideration in excess of \$10,000 or requiring performance by any party more than one year from the date hereof, which, in each case, cannot be cancelled without penalty or is not terminable on 90 days’ notice or less.

(ii) except for contracts relating to trade payables, all contracts relating to indebtedness of the Company, in each case having an outstanding principal amount in excess of \$10,000.

(b) Seller is not in material breach of, or material default under, any Material Contract, except to the extent such breach or default will be cured as a result of the payment of the applicable Cure Cost or which shall otherwise not prohibit the assumption and assignment of such Material Contract under the Bankruptcy Code.

(c) There are no renegotiations of, attempts to renegotiate, or outstanding rights to renegotiate any material amounts paid or payable to Seller Parties or material terms under any of the Material Contracts with any Person and no such Person has made written demand for such renegotiation. Except for defaults or breaches that will be cured as a result of the payment of the applicable Cure Cost or which shall otherwise not prohibit the assumption and assignment of such Material Contract under the Bankruptcy Code, no Seller Party has received any notice that any of the other parties to any Material Contract (i) is in material default thereunder, (ii) considers such Seller Party to be in material default thereunder or (iii) intends or plans to terminate or materially modify such Material Contract whether as a result of the transactions contemplated hereby or otherwise.

(d) Other than the Material Contracts, no Seller Party or any Affiliate of Parent is a party to or bound by any other contract that is material to the operations of the Business or the Purchased Assets.

(e) Schedule 3.10(e) identifies those contracts designated by Buyer to be assigned to and assumed by Buyer (the “**Assumed Contracts**”), which schedule may be updated by Buyer from time to time up to and including the Closing Date to add or remove Assumed Contracts. Except as set forth on Schedule 3.10(e), each of the Assumed Contracts contains the entire agreement of the parties thereto, with respect to the subject matter thereof, is in full force and effect, and is valid and enforceable in accordance with its terms. Subject to entry of the Sale Order, all of the Assumed Contracts are assignable to Buyer without the consent or approval of other parties. For the avoidance of doubt, if any Governmental Authority requires Seller Parties and/or Buyer, in order to assign or novate any Assumed Contract to Buyer, to enter into any agreement with terms, conditions, recitals or stipulations that conflict with any provision of this Agreement, such agreement shall in no way amend, supplement or otherwise modify any provision of this Agreement and this Agreement shall control as between Seller Parties and Buyer.

Section 3.11 Compliance with Laws.

(a) Seller is in compliance with all laws that are applicable to the operation of the Business, except for such non-compliance that would not have a material and adverse effect on the Business.

(b) Seller holds all material licenses, permits, registrations, authorizations, qualifications and approvals (“**Licenses**”) necessary for the operation of the Business as currently conducted. Except as would not have a material and adverse effect on the Business, such Licenses are in full force and effect and no action or proceeding has been instituted or threatened in writing with respect to the suspension, revocation, termination or expiration of such Licenses.

(c) There are no actions, suits, claims, or other legal proceedings pending or, threatened in writing against any Seller, Parent or any Affiliate of Parent relating to the Business or the Purchased Assets, except for actions, suits, claims, or other legal proceedings as would not have a material and adverse effect on the Business or the Purchased Assets.

(d) Seller is not subject to any outstanding order, writ, injunction or decree of a governmental authority that has material and adverse effect on the Business.

(e) Seller has provided Buyer with a copy of each License.

Section 3.12 Employees.

(a) Seller Parties have provided to Buyer a complete and correct list of all the employees of Seller Parties employed in the Business as of the date set forth thereon and, for each employee, the title held, exempt or non-exempt status, salary or wage, date of hire, and bonuses and salary increases within the past year, but with the names of each employee redacted.

(b) Seller is in compliance with all applicable laws pertaining to employment and employment practices to the extent they relate to employees of the Business.

(c) Seller is not and has not been party to any collective bargaining agreement or other similar contract with any labor organization, union or association with respect to any of its employees related to the Business.

Section 3.13 Brokers. No broker, finder, financial advisor or investment banker is entitled to any broker’s, finder’s, financial advisor’s or investment banker’s fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Seller Parties for which Buyer may become liable.

Section 3.14 Fair Value. The Purchase Price and other consideration provided under this Agreement constitutes (a) fair market value for the Purchased Assets and (b) at least reasonably equivalent value (as that term is used in section 548 of title 11 of the United States Code and the Uniform Fraudulent Transfer Act, as applicable) for the Purchased Assets. No Seller Party is entering into this Agreement or undertaking the transactions contemplated by this Agreement for the purposes of hindering, delaying, or defrauding any person or entity to which such Seller Party is, or will become, indebted.

Section 3.15 Conditions Affecting Seller Parties. There are no conditions existing with respect to Seller’s, Parent’s or an Affiliate of Parent’s markets, products, facilities, personnel or raw material supplies that would reasonably be expected to have a material and adverse effect on the Purchased Assets or the Business, other than such conditions as generally affect the industry as a whole. No representation or warranty or other statement made by Seller, Parent or an Affiliate of Parent in this Agreement, the Schedules, the Ancillary Documents or otherwise in connection with the transactions contemplated hereby contains any untrue statement of material fact or omits to state a material fact necessary to make such statements not misleading.

ARTICLE IV. REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller Parties as follows:

Section 4.01 Binding Obligation; Authority.

(a) Assuming due authorization, execution, and delivery by the other Parties to this Agreement, this Agreement constitutes the legal, valid, and binding obligation of Buyer.

(b) Buyer has all necessary power and authority to enter into this Agreement, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery by Buyer of this Agreement, the performance by Buyer of its obligations hereunder, and the consummation by Buyer of the transactions contemplated hereby have been duly authorized by all requisite action on the part of Buyer.

Section 4.02 Organization; Power and Authority.

(a) Buyer is a corporation duly organized, validly existing and in good standing under the law of the State of Delaware.

(b) Buyer has all necessary power and authority to carry on its business as now conducted, to own or lease all of the properties and assets owned or leased by it, and to consummate the transactions contemplated hereby.

Section 4.03 No Conflicts; Consents. The execution and delivery by Buyer of this Agreement, and the consummation of the transactions contemplated hereby, do not: (a) result in a violation or breach of any provision of the organizational documents of Buyer; or (b) result in a violation or breach of any provision of any law or governmental order applicable to Buyer; except in the case of clause (b) where the violation or breach would not have a material and adverse effect on Buyer.

Section 4.04 Brokers. No broker, finder, financial advisor or investment banker is entitled to any broker's, finder's, financial advisor's or investment banker's fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Buyer for which any Seller Party may become liable.

ARTICLE V. ADDITIONAL AGREEMENTS OF THE PARTIES

Section 5.01 Tax Matters.

(a) The Parties shall cooperate fully, as and to the extent reasonably requested by another Party, in connection with Tax matters arising after the Closing Date related to the Business or the Purchased Assets, including any audit, investigation, litigation or other proceeding with respect to Taxes. Such cooperation shall include the retention and (upon the other Party's request) the provision of records and information which are reasonably relevant to any such audit, investigation, litigation or other proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. Seller Parties agree (i) to retain all Books and Records with respect to Tax matters pertinent to Seller relating to any taxable period beginning before the Closing Date until the expiration of the statute of limitations of the respective taxable periods, and to abide by all record retention agreements entered into with any taxing authority, and (ii) to give Buyer reasonable written notice prior to transferring, destroying or discarding any such Books and Records and, if Buyer so requests, Buyer be permitted to take possession of such Books and Records

(b) All transfer, documentary, sales, use, stamp, registration, vehicle titling and registration and other Taxes and governmental charges, 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, regardless of the Person against whom they are assessed, shall be paid by Buyer when due and in full.

(c) Seller Parties shall timely file or cause to be filed when due all applicable Tax Returns and pay all Taxes arising from the operation of Seller for the years ended December 31, 2021 and December 31, 2022 and for the portion of the tax year which includes the Closing Date for which Buyer may be liable as a transferee of the Business, including payroll taxes, sales and use taxes and escheat or unclaimed property.

(d) The parties shall make all Tax filings consistent with the Purchase Price Allocation, including federal Form 8594.

Section 5.02 Name Change. Within 10 Business Days following the Closing Date, Seller shall change its corporate name to Taronis Sub V, LLC. After the Closing, Seller shall not, directly or indirectly, use or do business, or allow any Affiliate to use or do business, or assist any third party in using or doing business, under the name “MagneGas Welding Supply – South, LLC”.

Section 5.03 Agreement to Cooperate. Following the Closing, Seller Parties and Buyer shall each deliver or cause to be delivered at such times and places as shall be reasonably requested such additional instruments as Buyer or Seller Parties may reasonably request for the purpose of carrying out the transactions contemplated by this Agreement. Seller Parties will cooperate with Buyer after the Closing in furnishing information, evidence, testimony and other assistance in connection with any actions, proceedings or disputes of any nature with respect to matters pertaining to all periods prior to the Closing.

Section 5.04 Confidentiality.

(a) Each Seller Party hereby acknowledges that all Confidential Information (as hereinafter defined) will be the property of Buyer following the Closing Date. For purposes of this Agreement, “**Confidential Information**” shall mean all information, “know how”, knowledge and data of each Seller Party related to Seller’s business (and any portion thereof), including the Business, as of the Closing Date, including any products, services, fees, pricing, designs, plans, strategies, analyses, forecasts, formulas, drawings, photographs, reports, records, software, other operating systems, applications, program listings, flow charts, manuals, documentation, data, databases, specifications, technology, inventions, new developments and methods, improvements, techniques, devices, products, methods, know-how, processes, procedures financial data, customer lists, contact persons, cost information, executive information, regulatory matters, personnel matters, accounting and business methods, trade secrets, and copyrightable works, in each case whether patentable or unpatentable and whether or not reduced to practice, and all similar and related information in whatever form; provided, however, that Confidential Information shall not include information that is generally known to the public other than as a result of disclosure in breach of this Agreement or any other agreement by which Seller Parties are bound. Each Seller Party acknowledges that the Confidential Information constitutes a valuable, special, and unique asset formerly used by a Seller. Each Seller Party further acknowledges that protection of such Confidential Information against unauthorized disclosure and use is of critical importance to Buyer in maintaining its competitive position. Each Seller Party will not, whether directly or indirectly, alone or in association with others, in the capacity as a partner, stockholder, member or other equity holder, or through or in connection with any other Person, and will cause their respective Affiliates to not, directly or indirectly, disclose or cause or permit to be disclosed, to any Person whatsoever, or utilize or cause or permit to be utilized, by any Person whatsoever, any Confidential Information (whether acquired prior to or subsequent to the execution of this

Agreement) or otherwise at any time hereafter; provided, however, that the foregoing shall not prevent any Seller Party from disclosing or utilizing such Confidential Information as required by law or by a governmental or regulatory body, in which event such Seller Party, as applicable, shall notify Buyer and cooperate with Buyer in obtaining reasonable confidentiality protections in advance of such disclosure.

(b) In the event of an actual or threatened breach by Seller Party of any provision of this Section 5.04, each Seller Party acknowledges that any actual or threatened breach by any Seller Party of any provision of this Section 5.04 would give rise to irreparable harm to Buyer and its Affiliates, for which monetary damages would not be an adequate remedy, and Buyer and its Affiliates shall be entitled to injunctive or other appropriate equitable relief, enjoining, restraining and prohibiting such Person from violating this Section 5.04; provided, however, that nothing stated herein shall be construed as prohibiting or limiting Buyer or its Affiliates from pursuing such other remedies as may be available to it in or at equity, including the recovery of damages. Each Seller Party hereby waives any requirement on the part of Buyer or its Affiliates of proving actual damages or securing or posting any bond in connection with obtaining such injunctive or other equitable relief.

Section 5.05 Employee Matters.

(a) On or prior to the Closing Date, Buyer or one of its Affiliates shall make offers of employment to all employees of Seller who remain employed and actively working as of the Closing Date. Employees who accept such offer of employment shall be referred to as “**Acquired Employees**”. Following the Closing Date, (i) Acquired Employees will be retained on an at-will basis, so long as each Acquired Employee passes a drug test and background check, executes a restrictive covenant agreement with Buyer or one of its Affiliates on the Buyer’s form, and otherwise completes the standard documentation required of new employees of Buyer or one of its Affiliates in the ordinary course of business, in each case, at or prior to the start of such Acquired Employee’s employment with Buyer or one of its Affiliates, (ii) Buyer or one of its Affiliates shall provide each Acquired Employee with an annual base salary or wage level, as applicable, at least equal to the annual base salary or wage level, as applicable, provided to such Acquired Employee by Seller immediately prior to the Closing Date, except as otherwise agreed by such Acquired Employee and (iii) Buyer or one of its Affiliates shall provide Acquired Employees with benefits and other terms and conditions of employment as determined by Buyer.

(b) As of the Closing Date, Buyer or one of its Affiliates shall provide to each Acquired Employee under each employee benefit plan, program, arrangement, policy or practice, including without limitation severance, vacation and paid time off plans, established or maintained by Buyer or one of its Affiliates, credit for all purposes (including for purposes of eligibility to participate, vesting, benefit accrual, and severance) for full or partial years of service with Seller performed at any time prior to the Closing Date; provided, that no such prior service shall be taken into account to the extent it would result in the duplication of benefits to any Acquired Employee.

(c) Seller shall assume or retain, as the case may be, and be solely responsible for all Liabilities arising under, resulting from or relating to the Benefit Plans or Seller’s employment or termination of its employees, whether incurred before, on or after the Closing Date. Seller and its estate will remain liable for all employee compensation (including all applicable wages and taxes), bonuses and benefits, severance, retention, change in control, paid time off, and accrued vacation earned by Seller’s employees prior to Closing. Further, Seller shall be solely responsible for (i) any change of control, bonus, incentive, retention or other similar payments that become payable to any Person as a result of the transactions contemplated hereby, in each case, together with any employer-paid portion of any employment payroll Taxes and any payroll expenses related thereto, and (ii) any severance or other termination-related payment (including payout of accrued paid time off, vacation, or similar benefits) owed to any individual who does not become an Acquired Employee for any reason. Seller Parties and Buyer agree that Buyer does not intend to be and

is not a successor employer to Seller Parties for any purpose, and Buyer shall not assume any Benefit Plan or any obligations thereunder.

(d) As of the Closing Date, Seller will have fully funded all benefits provided under any retirement, annuity, or custodial account Benefit Plan intended to be qualified under Sections 401 or 403 of the Code that is maintained or contributed to by Seller or any Affiliate thereof, and the Acquired Employees shall be fully vested in their benefits in such Benefit Plans. Further, if requested by Buyer, Seller hereby covenants and agrees to amend, merge, terminate or take any other reasonable action with respect to the Benefit Plans on, before, or following Closing, including, but not limited to, causing any Benefit Plan to spin-off or transfer the accrued aggregate account balances of affected employees. Consistent with the foregoing, Seller agrees to take all steps necessary to accomplish such requests; to provide any required notices to participants and appropriate Governmental Authority; to adopt all necessary resolutions and Benefit Plan amendments in order to accomplish such requests; and to provide to Buyer satisfactory evidence of such actions.

(e) Prior to, as of, and following the Closing Date, Seller and its estate shall be solely responsible for providing continuation coverage (within the meaning of COBRA) to employees of Seller (and their dependents) for qualifying events occurring up to and including the Closing Date. Further, Seller shall remain responsible for any WARN Act liabilities resulting from the termination of any employees' employment with Seller.

(f) This Section 5.05 shall be binding upon and inure solely to the benefit of each of the parties to this Agreement, and nothing in this Section 5.05, express or implied, shall confer upon any employee or any legal representative or beneficiary thereof, any rights or remedies, including any right to employment or continued employment for any specified period, or compensation or benefits of any nature or kind whatsoever under this Agreement. Nothing in this Section 5.05, express or implied, shall be deemed an amendment of any plan providing benefits to any employee.

Section 5.06 Accounts Receivable. From and after the Closing, if Seller Parties receive or collect any accounts receivable in respect of the Purchased Assets or the Business relating to any period following the Closing, such Seller Party shall remit any such amounts to Buyer within five (5) days of the day on which such Seller Party receives such sum. Following the Closing Date, the Seller Parties shall reasonably cooperate with Buyer to collect all Accounts Receivable. All payments made by third parties shall be credited to the oldest outstanding invoice of Seller unless specifically designated by the third party as a payment for a different invoice. During 120-day period following the Closing Date, Seller will also permit Buyer and Buyer's employees to have access to and utilize Seller Parties' computer systems and software to permit Buyer to record sales, billing, customer and other operational data related to the Purchased Assets until Buyer has transferred all required data to its systems, which transfer the Seller Parties will facilitate.

Section 5.07 Access to Computer Files and Employees. Upon Buyer's successful bid for the Purchased Assets, the Seller Parties shall (i) immediately authorize, permit and facilitate, upon reasonable advance notice and during normal business hours, Buyer's and its Affiliates access to any personnel and/or data of the Seller Parties reasonably necessary for integration purposes (including, without limitation, banking information and information related to personnel) and (ii) shall immediately authorize Buyer and its Affiliates to contact employees of Seller with respect to potential employment with Buyer or its Affiliates.

Section 5.08 Cure Costs. Seller shall sell, transfer and assign, all Assumed Contracts to Buyer, and Buyer shall purchase and assume all Assumed Contracts from Seller, as of the Closing Date pursuant to sections 363 and 365 of the Bankruptcy Code and the Sale Order. In connection with debts incurred or

the assumption and assignment of the Assumed Contracts, Buyer shall cure any monetary defaults of the debts incurred or under the Assumed Contracts by payment of the Cure Costs. Buyer shall be responsible for demonstrating and establishing adequate assurance of future performance before the Court with respect to the Assumed Contracts.

Section 5.09 Restrictive Covenants. For a period of five years from and after the date hereof, no Seller and none of their respective Affiliates shall, directly or indirectly, engage or participate in any manner anywhere within 150 miles of any of any Seller Party's current locations in any business that is competitive with the Business. The parties agree that, if any court of competent jurisdiction finally determines that a specified time period, a specified geographical area, a specified business limitation or any other relevant feature of this Section 5.09 is unreasonable, arbitrary, against public policy or otherwise unenforceable under the circumstances, then any such provision shall be revised by such court to a lesser period of time, geographical area, business limitation or other relevant feature, as the case may be, which is determined by such court to be as close to the original provision as possible and enforceable against the applicable party under the circumstances, and such provision shall be enforced accordingly. Seller Parties acknowledge and agree that (a) the covenants and agreements set forth in this Section 5.09 were a material inducement to Buyer to enter into this Agreement and to perform its obligations hereunder, (b) Buyer would not obtain the benefit of the bargain set forth in this Agreement as specifically negotiated by the parties hereto if Seller Parties or any of their respective Affiliates breached the provisions of this Section 5.09, (c) any breach of the provisions of this Section 5.09 by Seller Parties or their respective Affiliates would result in a significant loss of goodwill by Buyer, (d) the length of time, scope and geographic coverage of the covenants set forth in this Section 5.09 is reasonable given the benefits Seller is receiving hereunder, (e) Seller Parties are familiar with all the restrictive covenants contained in this Section 5.09 and are fully aware of their respective obligations hereunder, and (f) no Seller will challenge the reasonableness of the time, scope, geographic coverage or other provisions of this Section 5.09. Seller Parties further acknowledge and agree that irreparable injury will result to Buyer if Seller Parties or any of their respective Affiliates breach any of the terms of this Section 5.09, and that in the event of an actual or threatened breach by Seller Parties or any of their respective Affiliates of any of the provisions contained in this Section 5.09, Buyer will have no adequate remedy at law. Seller Parties accordingly agree that in the event of any actual or threatened breach by Seller Parties or any of their respective Affiliates of any of the provisions contained in this Section 5.09, Buyer shall be entitled to injunctive and other equitable relief. Nothing contained herein shall be construed as prohibiting Buyer from pursuing any other remedies available to it for such breach or threatened breach, including the recovery of any damages that it is able to prove. Seller Parties shall cause their respective Affiliates to comply with this Section 5.09, and shall be liable for any breach by any of their respective Affiliates of this Section 5.09.

Section 5.10 Conduct of Business Prior to Closing. From and after the date of this Agreement through the Closing, Seller Parties covenant and agree that, with respect to the Purchased Assets and Seller's operation of the Business:

- (a) the Business will be conducted only in the ordinary course, including normal commitments for the purchase of supplies and the sale of goods and services;
- (b) no material contract will be entered into by or on behalf of Seller Parties or any Affiliate of Parent relating to the Purchased Assets or the Business;
- (c) Seller Parties will promptly notify Buyer if Seller Parties receive any notice (written or oral) from any material customer regarding or contemplating any adverse change in the customer's relationship with the Business, whether before or after the Closing Date;

(d) Seller Parties will promptly notify Buyer if Seller Parties receive any notice (written or oral) that an employee is resigning as an employee of a Seller Party;

(e) Seller Parties will not pay any bonuses or approve any salary or wage increases or any contributions to any Benefit Plan for any of the employees of Seller Parties or the Business other than in the ordinary course of the Business in amounts calculated on a basis consistent with past practices;

(f) with respect to the Purchased Assets and the operation of the Business, Seller Parties and Parent's Affiliates, as applicable will use commercially reasonable efforts to preserve Seller's business organization intact, to keep available the services of present employees and to preserve Seller's reputation and goodwill;

(g) Seller Parties will not pay, loan, advance or distribute, any amounts to any director, officer or equity owner of any Seller Party, except for payments made in accordance with past practices (including distributions to equity owners of Seller in accordance with past practices) or as disclosed in this Agreement or a Schedule attached hereto;

(h) Seller Parties and Parent's Affiliates, as applicable, will not enter into any agreement or arrangement with any director, officer or equity owner of the Seller Parties or any Affiliates of Parent or any member of such Person's family with respect to the Purchased Assets or the Business, except as disclosed in this Agreement or a Schedule attached hereto;

(i) no Seller Party or any of Parent's Affiliates, as applicable, will sell or lease any of its assets or properties, tangible or intangible (including the Purchased Assets) used in the operation of the Business, except in the ordinary course of the Business;

(j) no Seller Party or any Parent's Affiliates will agree to do any of the foregoing; and

(k) Seller Parties and Parent's Affiliates, as applicable, will maintain the Purchased Assets in good condition and repair (normal wear and tear excepted) and insured under the insurance coverage in effect as of the date hereof.

Section 5.11 Submission for Court Approval.

(a) Buyer and Seller Parties acknowledge that this Agreement and the transactions contemplated hereby are subject to approval by the Court and entry of the Sale Order. In the event of any discrepancy between this Agreement and the Sale Order, the Sale Order shall govern.

(b) Seller Parties shall use commercially reasonable efforts to have the Court hold the Sale Hearing and enter the Sale Order as promptly as practicable.

(c) From and after the date hereof, Seller Parties shall not take any action that is intended to result in, or fail to take any action the intent of which failure to act would result in, the reversal, voiding, modification or staying of the Sale Order. Buyer has not colluded in connection with its offer or negotiation of this Agreement. From and after the date hereof, Buyer shall not take any action that is intended to result in, or fail to take any action the intent of which failure to act would result in, the reversal, voiding, modification or staying of the Sale Order or consummation of the transactions contemplated hereby.

(d) Buyer agrees that it will promptly take such actions as are reasonably requested by Seller Parties to assist in obtaining entry of the Sale Order, including furnishing affidavits or other documents or information for filing with the Court for the purposes, among others, of demonstrating that Buyer is a "good

faith” purchaser under section 363(m) of the Bankruptcy Code; provided, however, in no event shall Buyer or Seller Parties be required to agree to any amendment of this Agreement.

(e) Seller Parties further covenant and agree that, after the entry of the Sale Order, the terms of any reorganization or liquidation plan Seller Parties submit to the Court, or any other court for confirmation or sanction, shall not be intended to (or reasonably likely to) supersede, abrogate, nullify or restrict the terms of this Agreement in any material respect, or prevent the consummation or performance of the transactions contemplated hereby.

Section 5.12 Removal of Excluded Assets and Transfer of California MagneGas Cylinders.

As soon as practicable following the Closing, and in any event no later than one (1) month following the Closing, upon reasonable advance prior notice, the Seller Parties shall, to the extent applicable and at their own cost and expense, (i) remove all of the Excluded Assets from any Owned Real Property or Leased Real Property that is acquired by Buyer or its Affiliates (whether as a Purchased Asset or Assumed Contract) pursuant to the terms of this Agreement and (ii) cause the California MagneGas Cylinders to be transported to the Seller’s facility located in Tyler, Texas.

ARTICLE VI. CONDITIONS PRECEDENT TO CLOSING

Section 6.01 Conditions Precedent to the Obligations of Buyer and Seller Parties. The obligations of Buyer and Seller Parties to consummate the Closing are subject to the satisfaction or waiver of the following conditions:

(a) On the Closing Date, (i) no material Legal Requirement shall have been enacted, entered, issued, promulgated or enforced by any Governmental Authority that prohibits or substantially restrains any of the transactions contemplated by this Agreement or that substantially delays any material aspect of the transactions contemplated by this Agreement, and (ii) no action shall have been commenced by any Governmental Authority with jurisdiction over the Purchased Assets or any other Person before any Governmental Authority that seeks to restrain, materially and adversely alter or render unlawful the consummation any of the transactions contemplated by this Agreement or that would substantially delay any material aspect of the transactions contemplated by this Agreement; provided, however, that Buyer or Seller Parties, as the case may be, may not invoke the condition in this Section 6.01(a) if (i) Buyer or Seller Parties, as the case may be, shall have failed in any material respect to use its commercially reasonable efforts to oppose, contest, resolve, appeal, defend against or lift, as applicable, such Legal Requirement, or (ii) compliance with any such Legal Requirement described in Section 6.01(a) or the relief sought by the Governmental Authority in any such action described in Section 6.01(a) would not reasonably be expected to have a material adverse effect on Seller Parties or Buyer.

(b) All permits and approvals, if any, required by applicable Legal Requirements to be obtained from any Governmental Authority to consummate the Closing shall have been obtained, except for those whose failure to be obtained will not result in a material adverse effect on the Purchased Assets, the Business or Buyer, as applicable.

Section 6.02 Conditions to Buyer’s Performance. Buyer’s obligations to purchase and pay the Purchase Price for the Purchased Assets are subject to the satisfaction or waiver of the following conditions:

(a) The representations and warranties of Seller Parties contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date (as if made on the Closing Date), and Seller Parties shall have delivered to Buyer a certificate to such effect, dated as of the Closing Date and

signed by an authorized representative of Seller Parties, which certificate shall be in form and substance reasonably satisfactory to Buyer.

(b) All of the covenants of Seller Parties set forth herein and which were to be performed at or prior to the Closing Date (including the delivery of the items set forth on Annex B-1) shall have been duly performed in all material respects, and Seller Parties shall certify to such effect in the certificate provided for in Section 6.02(a) hereof.

(c) The continued existence of sufficient Debtor-in-Possession financing to facilitate and close the transactions contemplated herein.

(d) Buyer shall be reasonably satisfied with the Schedules.

(e) There shall not have been instituted or threatened, in writing, on or before the Closing Date, any action before any Governmental Authority challenging the validity of this Agreement or seeking to prevent or materially delay the acquisition of the Purchased Assets or the Business as contemplated hereby.

(f) There shall not have been any material adverse change in the Purchased Assets or the assets, operations or financial condition of Seller Parties, or any event or series of events that could reasonably likely be expected to result in a material adverse change in the Purchased Assets or the assets, operations or financial condition of Seller Parties of which Buyer becomes aware after January 6, 2023.

(g) Seller Parties and other required parties shall have executed and delivered the Transition Services Agreement, the Bill of Sale, the Assumption and Assignment Agreement and the other instruments provided for herein, and such other documents, reasonably satisfactory to Buyer's counsel, as shall be necessary or appropriate to the transfer of the Purchased Assets and the Business to Buyer.

(h) The Required Consents shall have been obtained.

(i) The Court shall have entered the Sale Order, transferring the Purchased Assets free and clear of all Liens (except Permitted Liens) and including that Buyer is a good faith purchaser entitled to protections of Section 363 (m) and Section 363 (n) of the Bankruptcy Code, on or prior to February 1, 2023, which shall include a waiver of the stay in Bankruptcy Rules 6004(h), 6006(d) and Local Rule 6004-1, and such Sale Order shall be a Final Order.

(j) The board of directors or similar governing body of Buyer shall have approved the transactions contemplated hereunder.

(k) All other agreements, certificates and documents reasonably requested from Seller Parties or any of Parent's Affiliates by Buyer shall have been fully executed and delivered by Seller Parties or the applicable Affiliate of Parent along with such other documents reasonably satisfactory to Buyer or its counsel, as shall be necessary or appropriate to the transfer of the Purchased Assets and the Business to Buyer.

Section 6.03 Conditions to Seller Parties' Performance. Seller Parties' obligations pursuant to this Agreement are subject to satisfaction or waiver of the following conditions:

(a) The representations and warranties of Buyer contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date (as if made on the Closing Date), and Buyer shall have delivered to Seller Parties a certificate to such effect, dated as of the Closing Date and signed by

its Chief Financial Officer or a Vice President, which certificate shall be in form and substance reasonably satisfactory to Seller Parties.

(b) All of the covenants of Buyer set forth herein and which were to be performed at or prior to the Closing Date (including the delivery of the items set forth on Annex B-2) shall have been duly performed in all material respects and Buyer shall certify to such effect in the certificate provided for in Section 6.03(a) hereof.

(c) There shall not have been instituted or threatened, in writing, on or before the Closing Date, any action or proceeding before any Governmental Authority challenging the validity of this Agreement or seeking to prevent or materially delay the acquisition of the Purchased Assets or the Business as contemplated hereby.

(d) All other agreements, certificates and documents reasonably requested from Buyer by Seller Parties shall have been fully executed and delivered by Buyer along with such other documents reasonably satisfactory to Seller Parties or their counsel, as shall be necessary or appropriate to the transfer of the Purchased Assets and the Business to Buyer.

ARTICLE VII. TERMINATION

Section 7.01 Termination Prior to Closing. Notwithstanding anything in this Agreement to the contrary, this Agreement and the transactions contemplated by this Agreement may not be terminated prior to Closing, except as follows:

- (a) by mutual consent in writing of Buyer and Seller Parties;
- (b) by Seller Parties or Buyer at any time after February 10, 2023 (or such later date as shall be necessary to permit a party to fully exercise any cure rights it may have under this Section 7.01) (the “**Outside Date**”); provided, that the right to terminate this Agreement under this Section 7.01(b) shall not be available to any party whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure of the Closing to occur by such date;
- (c) by Buyer, by giving written notice of such termination to Seller Parties, if the Sale Order has not been entered on or before February 1, 2023 (the “**Sale Order Outside Date**”) or if such Sale Order is subject to a stay or injunction on the Sale Order Outside Date;
- (d) by Buyer, if there is any material breach declared by the Debtor-in-Possession lender (which remains uncured and not waived or subject to forbearance by the Debtor-in-Possession lender) or termination of the Debtor-in-Possession financing;
- (e) by Buyer, if there is any material adverse change to the Business of which Buyer becomes aware after January 6, 2023;
- (f) by Buyer, if there is conversion of the Bankruptcy Cases to cases under chapter 7 of the Bankruptcy Code;
- (g) by Buyer, if there is dismissal of the Bankruptcy Cases;
- (h) by Seller Parties or Buyer, if any Legal Requirement of a Governmental Authority of competent jurisdiction prohibits the consummation of the transactions contemplated by this Agreement, and such Legal Requirement has become final and non-appealable and was not entered at the request of the

terminating party; provided, however, that Seller Parties or Buyer, as the case may be, may not invoke the condition in this Section 7.01(h) if (i) Seller Parties or Buyer, as the case may be, shall have failed to in any material respect to use its commercially reasonable efforts to oppose, contest, resolve, appeal, defend against or lift, as applicable, such Legal Requirement, or (ii) compliance with any such Legal Requirement described in Section 6.01(a) would not reasonably be expected to have a material adverse effect on Seller Parties or Buyer, as the case may be; or

(i) by Buyer, if (i) there has been a breach by Seller Parties of any representation or warranty of Seller Parties contained in this Agreement which would reasonably be expected to have a material adverse effect on the Purchased Assets or the Business or to prevent or delay the consummation of the transactions contemplated by this Agreement beyond the Outside Date, and which breach is not curable or, if curable, has not been cured within five days after written notice of such breach by Buyer to Seller Parties, or (ii) there has been a breach by Seller Parties of any of the covenants or agreements of Seller Parties set forth in this Agreement which would reasonably be expected to have a material adverse effect on the Purchased Assets or the Business, or to prevent or delay the consummation of the transactions contemplated by this Agreement beyond the Outside Date, and which breach is not curable or, if curable, has not been cured within five days after written notice of such breach by Buyer to Seller Parties; or

(j) by Seller Parties, if (i) there has been a breach by Buyer of any representation or warranty of Buyer contained in this Agreement which would reasonably be expected to have a material adverse effect on Buyer, or prevent or delay the consummation of the transactions contemplated by this Agreement beyond the Outside Date, and which breach is not curable or, if curable, has not been cured within five days after written notice of such breach by Seller Parties to Buyer or (ii) there has been a breach by Buyer of any of the covenants or agreements of Buyer set forth in this Agreement which would reasonably be expected to have a material adverse effect on Buyer, or to prevent or delay the consummation of the transactions contemplated by this Agreement beyond the Outside Date, and which breach is not curable or, if curable, has not been cured within five days after written notice of such breach by Seller Parties to Buyer.

Section 7.02 Effect of Termination. In the event that this Agreement shall be terminated pursuant to Section 7.01, all further obligations of the parties under this Agreement shall terminate without further liability of any party to another; provided, however, that the obligations of the parties contained in this Section 7.02 and Article VII and Article VIII shall survive any such termination. In addition to the foregoing, in the event Buyer fails to consummate the transactions contemplated by the terms of this Agreement for any reason not specifically provided herein, Seller Parties shall be entitled to seek and/or obtain all available legal and equitable remedies.

Section 7.03 Payment of Deposit. Buyer's Deposit shall be non-refundable and paid to Seller Parties in the event that this Agreement is terminated pursuant to Section 7.01(j). In the event that this Agreement is terminated pursuant to any other provision of Section 7.01, Buyer's Deposit shall be refunded to Buyer.

ARTICLE VIII. MISCELLANEOUS

Section 8.01 Notices. Any notice, request, instruction or other document to be given under this Agreement will be in writing and will be: (a) delivered personally; (b) sent by U.S. mail, postage prepaid, certified or registered mail, return receipt requested, (c) sent by reputable overnight courier, delivery charges prepaid; or (d) transmitted by electronic mail (and no "bounceback" or "automatic response" message is received). These notices will be sent to the following addresses and will be deemed given: (i) if delivered personally, at the time delivered; (ii) if sent by U.S. mail, 4 days after being deposited in the mail; (iii) if sent by reputable overnight courier, at the time delivered; or (iv) if transmitted by electronic mail during normal business hours, at the time when receipt is confirmed by the sender or sending account.

If to any of Seller Parties:
Taronis Fuels, Inc.
24980 N. 83rd Avenue
Peoria, AZ 85383
Attention: Jered Ruyle
Email: jeredruyle@magnegas.com

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

Potter Anderson & Corroon LLP
1313 N. Market Street, 6th Floor
Wilmington, Delaware
Attention: Michael Whittaker
Email: mwhittaker@potteranderson.com

If to Buyer:
MGP Holdings III Corp
520 Madison Ave., 40th Floor
New York, NY 10022
Attention: Rob D'Alessandro
Email: RobDAlessandro@meritusgas.com

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

Fried, Frank, Harris, Shriver & Jacobson LLP
One New York Plaza
New York, NY 10004
Attention: Erica Jaffe
Email: Erica.Jaffe@friedfrank.com

or to another address as either Party may indicate by notice delivered to the other Party in accordance with the provisions of this Section 8.01.

Section 8.02 Public Announcement. Except with respect to any filings required in connection with the transactions contemplated hereunder, prior to Closing, neither Buyer nor Seller Parties will issue any press release or make any other public announcement relating to this Agreement or the transactions contemplated hereby without the prior written approval of the other party (which approval will not be unreasonably withheld, conditioned or delayed), unless required by applicable law or by any listing agreement with any national securities exchange. Prior to issuing any such press release or making any such other public announcement as required by applicable law or by any listing agreement with any national securities exchange and without the other party's prior written approval, the disclosing party will give the other party a copy of the proposed press release or other public announcement and a reasonable opportunity to comment on the same.

Section 8.03 Entire Agreement; Amendments. This Agreement, the other agreements referred to in this Agreement and the Schedules and exhibits referred to in this Agreement contain the entire understanding of the Parties with regard to the subject matter contained in this Agreement and supersede all prior written or oral agreements, understandings or letters of intent between the Parties. This Agreement may be amended, modified or supplemented only by a written agreement signed by each of the Parties.

Section 8.04 Successors and Assigns; No Beneficiaries. The rights of each Party under this Agreement are not assignable without the written consent of the other Parties. Notwithstanding the foregoing, Buyer may assign this Agreement and its rights hereunder, in whole or in part, to one or more of its Affiliates (including, without limitation, Mitchell Welding Supply, LLC, a Texas limited liability company ("**Mitchell**") and a wholly-owned subsidiary of Buyer, as the transferee of the Purchased Assets, Assumed Liabilities and Assumed Contracts), to any purchaser of Buyer or any of its material assets and as security for the account of any lender providing financing (or any refinancing thereof) to Buyer or its Affiliates for the purpose of securing such financing (or any refinancing thereof). Pursuant to the immediately preceding sentence, Buyer hereby assigns to Mitchell all of its rights and obligations under this Agreement as a transferee of the Purchased Assets, Assumed Liabilities and Assumed Contracts. This Agreement is binding upon and inures to the benefit of the Parties and their successors and permitted assigns. Nothing in this Agreement, expressed or implied, is intended or will be construed to confer upon

any Person other than the Parties and their respective successors and permitted assigns any right, remedy, or claim under or by reason of this Agreement.

Section 8.05 Expenses; Headings; Further Assurances; No Inferences; Specific Performance.

(a) Except as set forth in this Agreement, and whether or not the transactions contemplated by this Agreement are consummated, each Party shall be responsible for its own respective fees, costs and expenses (including fees, costs and expenses of legal counsel, investment bankers, brokers or other representatives and consultants and appraisal fees, costs and expenses) incurred in connection with the negotiation of this Agreement and the other agreements contemplated hereby, the performance of this Agreement and the other agreements contemplated hereby, and the consummation of the transactions contemplated hereby and thereby.

(b) Article and section titles and headings in this Agreement have been inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement. The exhibits and Schedules referred to in this Agreement will be construed with and as an integral part of this Agreement to the same extent as if they were set forth in the Agreement.

(c) From time to time, as and when requested by any Party 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, including to make more fully effective the transfer of the Purchased Assets as contemplated herein.

(d) This Agreement has been mutually prepared, negotiated and drafted by the Parties. The Parties agree that the terms of this Agreement will be construed and interpreted against each Party in the same manner and that none of this Agreement's provisions will be construed or interpreted more strictly against one Party on the assumption that an instrument is to be construed more strictly against the Party that drafted the Agreement. The Parties agree that each Party is relying on counsel from its own attorneys, accountants and other advisors.

(e) The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed by Buyer or Seller Parties, as applicable, in accordance with their specific terms or were otherwise breached by Buyer or Seller Parties, as applicable. It is accordingly agreed that the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement by the other party, and to enforce specifically the terms and provisions hereof against such party in any court having jurisdiction, this being in addition to any other remedy to which the parties hereto are entitled at law or in equity.

Section 8.06 Waivers. Any term or provision of this Agreement may be waived, or the time for its performance may be extended, only pursuant to a writing signed by the Party or Parties entitled to the term's or provision's benefit. Any waiver will be validly and sufficiently authorized for purposes of this Agreement if, as to any Party, it is authorized in writing by an authorized representative of that Party. No waiver or any breach of this Agreement will be held to constitute a waiver of any other or subsequent breach.

Section 8.07 Partial Invalidity. Whenever possible, each provision of this Agreement will be construed in a manner as to be effective and valid under applicable law, but in case any provision contained in this Agreement is, for any reason, held to be invalid, illegal or unenforceable in any respect, that provision

will be ineffective only to the extent of that invalidity, illegality or unenforceability without invalidating the remainder of that provision or any other provisions in this Agreement, unless that construction would be unreasonable.

Section 8.08 Execution in Counterparts. This Agreement may be executed in any number of counterparts, and by the different Parties hereto in separate counterparts, each of which when executed shall be deemed an original, but all of which shall be considered one and the same agreement, and shall become effective when each Party has received counterparts signed by each of the other Parties, it being understood and agreed that delivery of a signed counterpart signature page to this Agreement by facsimile transmission, by electronic mail in portable document format (".pdf") form, or by any other electronic means (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com) intended to preserve the original graphic and pictorial appearance of a document shall constitute valid and sufficient delivery thereof and shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the Party against whom enforcement of this Agreement is sought.

Section 8.09 Disclosure Schedules. The Schedules to this Agreement (each a "Schedule" and, collectively, the "Schedules") shall be numbered and arranged to correspond to the sections of this Agreement, and the disclosures on any Schedule are to be taken as relating to the representations and warranties contained in the section of this Agreement that correspond to such Schedule; provided, in the event that a disclosure on a Schedule is readily apparent on the face of such disclosure that it is applicable to another Schedule, such disclosure shall be deemed to be disclosed on such other Schedule for purposes of this Agreement.

Section 8.10 Interpretation. In this Agreement, unless the context otherwise requires: (a) references to this Agreement are references to this Agreement and to the Schedules and exhibits hereto; (b) references to Articles and Sections are references to articles and sections of this Agreement; (c) references to any Party to this Agreement shall include references to its respective successors and permitted assigns; (d) references to the words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision, and references to any Article or Section are to an article or a section of this Agreement, as applicable, and references to any schedule or exhibit are to a schedule or exhibit to this Agreement, as applicable; (e) references to any document (including this Agreement) are references to that document as of the date hereof and as amended, consolidated, supplemented, novated or replaced by the parties hereto from time to time; (f) references to any law are references to that law as of the date hereof and the Closing Date, and all rules, regulations and guidance promulgated thereunder; (g) references to a judgment shall include references to any order, writ, injunction, decree, determination or award of any court or tribunal; (h) the word "including" and words of similar import shall mean "including, without limitation," and any list of items that may follow such word shall not be deemed to represent a complete list of, or be limited to, the contents of the reference of the subject; (i) unless the context otherwise requires, "or" is not exclusive; (j) the singular shall include the plural, the plural shall include the singular, and all nouns, pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, as the identity of the Person or Persons may require; (k) time is of the essences in the performance of the Parties' respective obligations under this Agreement; and (l) references to "\$" or "dollars" shall be to U.S. dollars and references to "days" shall be to calendar days.

Section 8.11 Governing Law; Venue. This Agreement is governed by and construed in accordance with the internal laws of the State of Delaware, without giving effect to any choice of law provisions that may direct the application of the laws of another jurisdiction. Any action or proceeding

seeking to enforce any provision, or based on any right arising out of, or to interpret any provision of, this Agreement may be brought against any of the Parties in the state and federal courts located in the State of Delaware, and each of the Parties consents to the exclusive jurisdiction of such courts (and other the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any Party anywhere in the world.

Section 8.12 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHTS IT MAY HAVE TO DEMAND THAT ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE RELATIONSHIPS OF THE PARTIES HERETO BE TRIED BY JURY. THIS WAIVER EXTENDS TO ANY AND ALL RIGHTS TO DEMAND A TRIAL BY JURY ARISING FROM ANY SOURCE INCLUDING THE CONSTITUTION OF THE U.S. OR ANY STATE THEREIN, COMMON LAW OR ANY APPLICABLE STATUTE OR REGULATIONS. EACH PARTY HERETO ACKNOWLEDGES THAT IT IS KNOWINGLY AND VOLUNTARILY WAIVING ITS RIGHT TO DEMAND TRIAL BY JURY.

[Remainder of page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the Parties have executed this Agreement on and as of the date first written above.

BUYER:

MGP HOLDINGS III CORP.

By: _____
Rob D'Alessandro
Vice Chairman

SELLER:

MAGNEGAS WELDING SUPPLY – SOUTH, LLC

By: _____
Timothy Turek
Chief Restructuring Officer

PARENT:

TARONIS FUELS, INC.

By: _____
Timothy Turek
Chief Restructuring Officer

Annex A

Defined Terms

“**Accounts Payable**” shall have the meaning given to it in Section 2.02(b).

“**Accounts Receivable**” shall have the meaning given to it in Section 3.05.

“**Affiliate**” means with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with such Person.

“**Agreement**” shall have the meaning given to it in the Preamble to this Agreement.

“**Assumption and Assignment Agreement**” means that certain Assumption and Assignment Agreement by and between Seller and Buyer (or an Affiliate of Buyer), as applicable, in the form mutually agreed upon by the Parties and substantially in the form attached hereto as Exhibit B.

“**Assumed Contracts**” shall have the meaning given to it on Section 3.10(e).

“**Assumed Liabilities**” shall have the meaning given to it in Section 2.02(a).

“**Avoidance Actions**” means all causes of action for avoidance and/or recovery under Chapter 5 of the Bankruptcy Code, including any preferential transfer or fraudulent conveyance arising under Sections 547, 544, 548, 549 or 550 of the Bankruptcy Code or any state fraudulent conveyance or fraudulent transfer statute.

“**Bankruptcy Cases**” shall have the meaning given to it in the Recitals to this Agreement.

“**Bankruptcy Code**” shall have the meaning given to it in the Recitals to this Agreement.

“**Benefit Plans**” means, collectively, all “employee benefit plans” as defined in Section 3(3) of ERISA, all benefit plans as defined in Section 6039D of the Code, and all other bonus, commission, equity or equity based, incentive compensation, deferred compensation, profit sharing, stock option, severance, supplemental unemployment, layoff, savings, salary continuation, retirement, pension, health, life insurance, disability, group insurance, vacation, holiday, paid time off, sick leave, fringe benefit or welfare plan or employment, consulting, change of control, independent contractor, professional services, confidentiality or non-competition agreement or any other similar plan, agreement, policy or understanding (whether oral or written, qualified or non-qualified, and regardless of whether funded) which Seller or any Affiliate currently sponsors, or to which Seller or any Affiliate has any outstanding present or future obligations to contribute or other Liability, whether voluntary, contingent or otherwise.

“**Bidding Procedures Order**” means *Amended Order (I) Approving Bidding Procedures for the Sale of the Debtors’ Texas Assets, (II) Authorizing the Debtors to Designate a Stalking Horse Bidder and to Seek Approval of Bid Protections, (III) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (IV) Approving Assumption and Assignment Procedures, (V) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof, and (VI) Granting Related Relief* [Docket No. 147].

“**Bill of Sale**” means that certain Bill of Sale executed by Seller for the benefit of Buyer, respectively and substantially in the form attached hereto as Exhibit A.

“Books and Records” means all books and records owned by any Seller Party relating to the Business, except (a) documents relating to the ownership, formation and governance of any Seller Party, including stock records, corporate charter, operating agreement, and code of regulations, as amended, minutes and other records of director or manager and/or meetings of Seller Parties and Tax returns of Seller Parties; (b) materials owned by Seller Parties that do not pertain to the Business; (c) Seller Parties’ business plans, strategies and financial records that solely address or reflect activities outside the Business; (d) medical records of employees and former employees for which the written consent to the release of such records is not obtained; (e) records relating to the Excluded Assets; (f) all records relating to any action pending or threatened against Seller Parties and the facts and circumstances relevant thereto; (g) records containing the work product of any financial consultant or adviser or any legal counsel to Seller Parties or subject to the attorney-client privilege; (h) records of Seller Parties relating to the preparation for and negotiation of this Agreement and the performance by Seller Parties of their obligations hereunder; and (i) any other records that Seller Parties are legally obligated to retain (e.g., employment records) (clauses (a) through (i), the **“Retained Records”**).

“Business Day” means a day other than Saturday, Sunday, or any day on which the principal commercial banks located in Wilmington, Delaware are authorized or obligated to close under the federal Laws of the U.S.

“Buyer” shall have the meaning given to it in the Preamble to this Agreement.

“California MagneGas Cylinders” shall have the meaning given to it in the definition of “Purchased Assets” in this Annex A.

“CARES Act” means collectively, the Coronavirus Aid, Relief, and Economic Security Act of 2020, P.L. 116-136, as amended; the Consolidated Appropriations Act, 2021; the Memorandum on Deferring Payroll Tax Obligations in Light of the Ongoing COVID-19 Disaster, dated August 8, 2020; Internal Revenue Service Notice 2020-65; Internal Revenue Service Notice 2021-11; the Health and Economic Recovery Omnibus Emergency Solutions Act, in each case, including any related regulations, similar orders or declarations from any Governmental Authority promulgated thereunder.

“Cash and Cash Equivalents” means the cash and cash equivalents (including deposit accounts, marketable securities and short-term investments) of Seller, net of customer and other third party deposits, deferred revenue, any overdrafts and any outstanding checks, drafts, wire transfers or similar instruments which have not been applied against such cash and cash equivalent balances.

“Closing” shall have the meaning given to it in Section 2.05.

“Closing Date” shall have the meaning given to it in Section 2.05.

“COBRA” means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

“Code” means the U.S. Internal Revenue Code of 1986, as amended.

“Confidential Information” shall have the meaning given to it in Section 5.04.

“Container” shall have the meaning given to it in the definition of “Excluded Assets”.

“Control” (including the terms “Controlled by” and “under common Control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies

of a Person, whether through the ownership of voting securities, by contract or credit arrangement, or as trustee, executor or otherwise.

“Court” shall have the meaning given to it in the Recitals to this Agreement.

“Cure Costs” means all cure costs that must be paid or otherwise incurred by Buyer as a result or pursuant to section 365 of the Bankruptcy Code in connection with the assumption and assignment of the Assumed Contracts as agreed by Seller, in consultation with Buyer, and applicable counterparties or as finally determined by the Court.

“Deposit” shall have the meaning given to it in Section 2.04(a).

“ERISA” means the U.S. Employee Retirement Income Security Act of 1974, as amended and the rules and regulations promulgated thereunder.

“Escrow Agent” shall have the meaning given to it in the Bidding Procedures Order.

“Excluded Assets” means (i) all Cash and Cash Equivalents, (ii) all contracts, agreements and undertakings of any Seller Party (including all Benefit Plans and assets attributable thereto), other than the Assumed Contracts; (iii) the Retained Records; (iv) all insurance policies of any Seller Party and the rights thereunder; (v) all claims of any Seller Party or any of their Affiliates for refunds of Taxes and other governmental charges; (vi) the rights that accrue or will accrue to any Seller Party under this Agreement; (vii) all Avoidance Actions and recoveries thereunder; (viii) all cylinders, tanks, containers or other vessels (collectively, **“Containers”**) (A) containing gases or other substances the identity of which cannot be readily and accurately determined by a visual examination of the Container itself or from the Books and Records as of the Closing Date, (B) containing gases or other substances not sold in the ordinary course of the Business, (C) that are permanently out-of-service as of the Closing Date (other than up to 2500 out-of-service acetylene gas cylinders that are owned by the Seller, which shall be considered Purchased Assets); (ix) any hardgoods inventory that has been reasonably determined by Buyer to be obsolete or unsaleable based on its condition or appearance, including those specific items described on Schedule 2.01; (ix) any assets of any Seller Party not related to the Business, including any of Seller Party’s interests in or rights with respect to equity interests of any Affiliates or third parties; and (xi) all assets of any Seller Party identified or listed on Schedule 2.01.

“Excluded Liability” shall have the meaning given to it in Section 2.02(b).

“Final Order” means an order of the Court or other court of competent jurisdiction: (a) as to which no appeal, notice of appeal, motion to amend or make additional findings of fact, motion or alter or amend judgment, motion for rehearing, motion for new trial, or any other proceeding challenging the findings, conclusions or relief granted by the Court has been timely filed or otherwise commenced or, if any of the foregoing has been timely filed or otherwise commenced, it has been disposed of by the Court or other court of competent jurisdiction in a manner that upholds and affirms the subject order in all material respects without the possibility for further appeal or rehearing thereon; (b) as to which the time for instituting and/or filing an appeal, a notice of appeal, motion for rehearing, motion for new trial, or any other proceeding challenging the finds, conclusions, or relief granted by the Court or other court of competent jurisdiction shall have expired; and (c) as to which no stay is in effect; provided, however, that the filing or pendency of a motion under Federal Rule of Bankruptcy Procedure 9024 shall not cause an order not to be deemed a “Final Order” unless such motion shall be filed within fourteen (14) days of the entry of the order at issue.

“Fixed Assets” shall have the meaning given to it in the definition of “Purchased Assets”.

“GAAP” means U.S. generally accepted accounting principles in effect from time to time.

“Governmental Authority” means any nation, state or local government, or other political subdivision thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government or taxation, including any government authority, agency, department board, commission or instrumentality of the U.S., any State of the U.S. or any political subdivision thereof, and any tribunal or arbitrator(s) of competent jurisdiction, and any self-regulatory organization.

“Indebtedness” means, with respect to any Person as of any time or date, without duplication: (i) any Liabilities of such Person for borrowed money, whether short-term or long-term, and whether secured or unsecured, or with respect to deposits or advances of any kind; (ii) any Liabilities of such Person evidenced by bonds, notes or other similar instruments; (iii) any Liabilities of such Person issued or assumed as the deferred purchase price of property or services (including any seller notes, earnout obligations or similar contingent payment obligations (such amount to be the maximum amount)); (iv) any Liabilities of such Person upon which interest charges are customarily paid (other than trade payables incurred in the ordinary course of business); (v) any Liabilities in respect of letters of credit, whether drawn or undrawn; (vi) the outstanding amount of any commitment by which such Person assures a creditor against loss (including any reimbursement Liability with respect to performance bonds, customs bonds, surety bonds, bankers acceptances and fidelity bonds); (vii) any leases of such Person required or permitted to be treated as capitalized leases under GAAP; (viii) all interest rate protection agreements or currency swap transactions of such Person (valued on a market quotation basis), if any; (ix) any Liability secured by, contingent or otherwise, any Liens on the assets or property (whether real, personal, tangible or intangible) of such Person; (x) any Liabilities of such Person under an interest rate, foreign currency exchange, currency swap or other interest or exchange rate hedging transactions (valued at the termination value thereof); (xi) any Liabilities with respect to the factoring of accounts receivable; (xii) any Liabilities resulting from the resolution or settlement of any private or governmental claim, proceeding, action, suit, arbitration, mediation or judicial proceeding to which such Person is a party or otherwise subject; (xiii) any Liabilities of such Person under conditional sale or other title retention agreements relating to any assets or property (whether real, personal, tangible or intangible) purchased by such Person; (xiv) any off-balance sheet financing of a Person (excluding operating leases); (xv) any deferred rent; (xvi) any Liabilities of such Person for underfunded employee pension benefit plans and any unsatisfied Liability for “withdrawal liability” to a “multiemployer plan” as such terms are defined under ERISA; (xvii) any Liabilities for renewals, extensions, refunds, deferrals, restructurings, amendments and modifications of any such Indebtedness; (xviii) all unpaid Tax Liabilities of Seller (with respect to the Business) that accrue during a taxable period (or portion thereof) ending on or prior to the Closing Date but become due and payable after the Closing Date, including for the employer’s portion of payroll Taxes deferred in accordance with the CARES Act or any similar or corresponding provision of state or local law or under any memorandum or executive order of the U.S. President, including the CARES Act, regardless of when due and payable (which shall not be an amount less than zero); (xix) any cash overdrafts; (xx) any accrued interest, breakage or prepayment premiums or penalties or other costs or expenses related to any of the foregoing, including any prepayment premiums payable assuming all amounts owing under any of the foregoing are paid on the Closing Date (whether or not actually paid); (xxi) all guarantees by such Person of Indebtedness or any of Liability of any other Person and any other Liabilities for which such Person is liable, directly or indirectly, as guarantor, surety or otherwise; (xxii) any accrued but unpaid revenue share, partner fees or other similar amounts payable to referral partners or other similar Persons; (xxiii) any deferred revenue received on or prior to the Closing Date; and (xxiv) any Accounts Payable.

“Intellectual Property” means any and all of the following arising pursuant to the laws of any jurisdiction throughout the world: (i) trademarks, service marks, trade names, and similar indicia of source of origin, all registrations and applications for registration thereof, and the goodwill connected with the use

of and symbolized by the foregoing; (ii) copyrights and all registrations and applications for registration thereof; (iii) trade secrets and know-how; (iv) patents and patent applications; (v) internet domain name registrations; and (vi) other intellectual property and related proprietary rights.

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

“Intellectual Property Assets” means all Intellectual Property that is owned by Seller and used in connection with the Business.

“Intellectual Property Registrations” means all Intellectual Property Assets that are subject to any issuance, registration, application or other filing by, to or with any governmental authority or authorized private registrar in any jurisdiction, including registered trademarks, domain names, and copyrights, issued and reissued patents and pending applications for any of the foregoing.

“Leased Real Property” shall have the meaning given to it in Section 3.06(b).

“Legal Requirement” means any judgment, decree, injunction, order, writ, ruling, law, ordinance, statute, rule, regulation, code or other requirement of all applicable Governmental Authorities.

“Liability” means any Indebtedness, liability or obligation of any nature whatsoever, whether accrued or unaccrued, absolute or contingent, direct or indirect, asserted or unasserted, known or unknown, perfected or unperfected, liquidated or unliquidated, secured or unsecured, or otherwise, and whether due or to become due.

“Licenses” shall have the meaning given to it in Section 3.11(b).

“Lien(s)” means any and all liens (statutory or otherwise, including “lien” as defined in Section 101(37) of the Bankruptcy Code, mechanics’, materialmens’ and other consensual and non-consensual liens and statutory liens), hypothecations, encumbrances, security interests, mortgages, debts, levies, indentures, pledges, restrictions (whether on voting, sale, transfer, disposition or otherwise), charges, instruments, preferences, priorities, security agreements, conditional sales agreements, title retention contracts, options, claims (including “claim” as defined in Section 101(5) of the Bankruptcy Code), judgments, offsets, rights of recovery, rights of pre-emption, rights of first refusal or other third party rights, claims for reimbursement, contribution, indemnity, exoneration, products liability, alter-ego, environmental, or Tax (including claims for any and all foreign, federal, state and local Taxes), decrees of any court or foreign or domestic governmental entity, orders of any Governmental Authority, of any kind or nature (including (i) any conditional sale or other title retention agreement and any lease having substantially the same effect as any of the foregoing, (ii) any assignment or deposit arrangement in the nature of a security device, and (iii) any claim based on any theory that either Buyer is a successor or a continuation of the Debtors or the Debtors’ business), reclamation claims, obligations, liabilities, demands, and guaranties, whether known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, whether arising prior to or subsequent to the commencement of the bankruptcy cases, and whether imposed by agreement, understanding, law, equity or otherwise, including claims otherwise arising under doctrines of successor liability.

“Material Contracts” shall have the meaning given to it in Section 3.10(a).

“Non-Assignable Asset” shall have the meaning given to it in Section 2.10.

“Outside Date” shall have the meaning given to it in Section 7.01(b).

“Owned Real Property” shall have the meaning given to it in Section 3.06(a).

“Parent” shall have the meaning given to it in the Preamble to this Agreement.

“Party(ies)” shall have the meaning given to it in the Preamble to this Agreement.

“Permitted Lien(s)” means (i) mechanic’s, materialmen’s, carriers’, repairers’ and other similar Liens arising or incurred in the ordinary course of business for amounts that are not yet delinquent or are being contested in good faith; (ii) liens for Taxes, assessments or other governmental charges not yet due and payable as of the date of this Agreement or which are being contested in good faith; (iii) Liens and restrictions on real property (including easements, covenants, rights of way, imperfections of title, boundary line disputes, overlaps, encroachments, rights of parties in possession, any supplemental taxes or assessments not shown by the public records, title to any portion of the premises lying within the right of way or boundary of any public road or private road and similar restrictions) and non-monetary Liens that would not have a material and adverse effect on the Business; (iv) purchase money Liens and Liens under capital lease arrangements; (v) Liens imposed or promulgated by laws with respect to real property and improvements, including zoning, building codes and other land use laws regulating the use or occupancy of real property or the activities conducted thereon which are imposed by any governmental authority having jurisdiction over such real property that would not have a material and adverse effect on the Business; (vi) matters that would be disclosed by an accurate survey or inspection of the real property; (vii) landlords’ or owner’s Liens and the rights of any lessor or owner and statutory liens; and (viii) Liens incurred or deposits made in the ordinary course of business in connection with workers’ compensation, unemployment insurance, or other social security programs or to secure the performance of bids, statutory obligations, surety or other bonds, leases, contracts with governmental authorities and similar obligations.

“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, a Governmental Authority or any other form of entity.

“Purchased Assets” shall mean

(x) all assets, properties, and rights of every kind and description, real, personal, and mixed, tangible and intangible, wherever situated, used, useful, or held for use in the Business as of the Closing Date, other than the Excluded Assets, including the following, schedules of which have been provided by Seller Parties to Buyer:

- (i) all Accounts Receivable;
- (ii) all inventory of Seller, including finished products and goods, raw materials, work in process, replacement and component parts, including inventory of Seller held at any third-party location and inventory previously purchased and in transit to Seller;
- (iii) except for any items that are Excluded Assets, all machinery, equipment, tooling, parts and spare parts, vehicles (including parts and spare parts therefor), personal property, supplies, computer hardware, software, furniture, fixtures and furnishings of Seller as of the Closing Date (the **“Fixed Assets”**), together with any express or implied warranty by the manufacturers, Seller

or lessors thereof or any component part thereof and all maintenance records and other documents related thereto;

(iv) all rights under any contracts and agreements listed on Section 3.10(e) (the **“Assumed Contracts”**);

(v) all Books and Records used in the Business, including information, files, records, data, employee files, plans, schematics, designs, drawings, blue prints, contracts and recorded information, customer, vendor and supplier lists, production records, accounting records, property records, mailing lists, customer pricing information, credit records, correspondence, office supplies, budgets, documents and records similar to the foregoing, and all other records and files with respect to the assets, properties and rights being transferred hereunder;

(vi) other than the Intellectual Property described on Schedule 2.01, all Intellectual Property owned or, to the extent assignable, used in the Business and the goodwill associated therewith;

(vii) all qualifications, registrations, filings, privileges, franchises, immunities, licenses and permits, authorizations and approvals of any Governmental Authority that are used by, or required for, the ownership and operation of the Business;

(viii) all rental and other security deposits, credits, prepayments, prepaid expenses, and deferred items (other than deferred Taxes), claims, deposits, refunds, claims for refunds and rights to offset in respect thereof, rights against third parties, causes of action, choses in action, rights of recovery, rights of set off, and rights of recoupment, rights to warranty claims, other prepaid items and all other intangible rights relating to the Business and/or the Purchased Assets;

(ix) Seller Parties’ right, title and interest in and to the Business, its goodwill, its corporate name and any other intangible asset owned by either Seller and used in the operation of the Business as of the Closing Date;

(x) the Owned Real Property set forth on Schedule 3.06(a);

(xi) all Permits required for the conduct of the Business as currently conducted or for the ownership and use of the Purchased Assets;

(xii) all of the “MagneGas” fuel gas cylinders (coded MAG) owned by Seller (the **“Texas MagneGas Cylinders”**); and

(xiii) all of Seller Parties’ rights under warranties, indemnities and all similar rights against third parties to the extent related to any Purchased Assets.

and

(y) up to 1731 “MagneGas” fuel gas cylinders (coded MAG) owned by MagneGas Welding Supply – West, LLC, a California limited liability company and an Affiliate of Parent (the **“California MagneGas Cylinders”**).

“Purchase Price” shall have the meaning given to it in Section 2.03.

“Purchase Price Allocation” shall have the meaning given to it in Section 2.09.

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

“Required Consents” shall have the meaning given to it in Section 3.03.

“Retained Records” shall have the meaning given to it in the definition of “Books and Records”.

“Sale Order” means an order of the Court, in form and substance acceptable to Buyer in its reasonable discretion and substantially in the form attached hereto as Exhibit D.

“Sale Order Outside Date” shall have the meaning given to it in Section 7.01(d).

“Schedules” shall have the meaning given to it in Section 8.09.

“Seller” shall have the meaning given to it in the Preamble to this Agreement.

“Seller Party(ies)” shall have the meaning given to it in the Preamble to this Agreement.

“Tax” or “Taxes” mean any federal, state, local or foreign, net or gross income, gross receipts, sales, use, ad valorem, transfer, franchise, license, withholding and other taxes, including any interest, penalties or additions with respect thereto.

“Tax Authority” means any government or subdivision, agency, commission or authority thereof that has jurisdiction over assessment, determination, collection or other imposition of Taxes.

“Tax Return” as used herein, means any return (including any information return), declaration, statement or report required to be supplied to a Tax Authority in connection with Taxes, including any amendments thereto.

“Texas MagneGas Cylinders” shall have the meaning given to it in the definition of “Purchased Assets” in this Annex A.

“Transaction Documents” means this Agreement, the Assumption and Assignment Agreement, the Bill of Sale, the Transition Services Agreement, and all other agreements, documents and instruments to be executed and delivered hereunder.

“Transition Services Agreement” means that certain Transition Services Agreement by and between Buyer and Seller and substantially in the form attached hereto as Exhibit C.

“U.S.” means the United States of America.

Annex B-1

Closing Deliveries by Seller Parties

1. Asset Purchase Agreement. This Agreement, duly executed by Seller Parties.
2. Assumption and Assignment. The Assumption and Assignment Agreement, duly executed by Seller Parties and/or an Affiliate of Parent, as applicable.
3. Bill of Sale. The Bill of Sale, duly executed by Seller Parties and/or an Affiliate of Parent, as applicable, for the benefit of Buyer, as applicable.
4. Titles. All original title documents related to any vehicles or other titled assets included in the Purchased Assets.
5. Required Consents. Reasonable evidence that Seller Parties have obtained the Required Consents.
6. Bring-Down Certificates. The certificates described in Section 6.02(a) and Section 6.02(b) hereof, duly executed by authorized officers of Seller Parties.
7. Officer's and Owner's Certificate. A certificate dated as of the Closing Date and executed by an authorized officer of each Seller Party certifying as to (i) true and complete copies of the resolutions of the board of directors and stockholders of Seller Parties authorizing the execution, delivery and performance by Seller Parties of this Agreement and the other agreements that each Seller Party is required to execute and deliver pursuant to the terms of this Agreement, (ii) true and complete copies of each Seller Party's organizational documents, (iii) the incumbency of the officer of each Seller Party executing this Agreement and any other agreement or instrument contemplated herein to which each Seller Party is a party, and (iv) a good standing certificate for each Seller Party from each jurisdiction in which each Seller Party is incorporated or qualified to conduct business.
8. W-9. An Internal Revenue Service Form W-9 properly executed and completed by each Seller Party.
9. Transition Services. The Transition Services Agreement, duly executed by Seller.

Annex B-2

Closing Deliveries by Buyer

1. Purchase Price. The Purchase Price payable to Seller as provided in Section 2.03.
2. Asset Purchase Agreement. This Agreement, duly executed by Buyer.
3. Assumption and Assignment. The Assumption and Assignment Agreement, duly executed by Buyer.
4. Transition Services. The Transition Services Agreement, duly executed by Buyer.
5. Bring-Down Certificates. The certificates described in Section 6.03(a) and Section 6.03(b) hereof, duly executed by an authorized officer of Buyer.

EXHIBIT A

Bill of Sale

EXHIBIT B

Assumption and Assignment Agreement

EXHIBIT C

Transition Services Agreement

EXHIBIT D

Sale Order